1981

Title 40 Chapter 01-06: Mines and Mining to Board of Division - 1981

Utah Code Annotated

TITLE 40

MINES AND MINING

Chapter

CHAPTER 1

MINING CLAIMS

Section

40-1-1. Lode claims — Size and shape — Discovery necessary. A lode mining claim, whether located by one or more persons, may equal, but shall not exceed, 1,500 feet in length along the vein or lode and may extend 300 feet on each side of the middle of the vein at the surface, except where adverse rights render a lesser width necessary. The end lines of each claim must be parallel. No location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located.

History: R.S. 1898, § 1495; L. 1899, ch. 14, § 1; C.L. 1907, § 1495; C.L. 1917, § 3890; R.S. 1933 & C. 1943, 55-1-1.

Cross-References.

Actions to quiet title, see notes to 78-40-1 et seq.

Partition of claims, 78-39-12, 78-39-13.

Proof of custom in actions on mining claims, 78-40-10.

Right of entry pending action for purposes of action, 78-40-6.

Temporary injunction in actions involving mining claims, 78-40-11.

Trespass on mining claim, limitation of actions, 78-12-26.

Discovery.

The question of whether there is a discovery of minerals sufficient to meet statutory requirements is one of fact and it is essential only that the discovery be of such significance that a practical, experienced miner would deem it advisable to pursue the vein or "lead." Rummell v. Bailey (1958) 7 U 2d 137, 320 P 2d 653.

The point of discovery must be located upon open public land and when the discovery point is located on private patented land the claim is void and not amendable. Cram v. Church (1959) 9 U 2d 169, 340 P 2d 1116.

Location and filing of claim.

One locating and filing as lode mining claim land suitable only for placer mining of limestone building rock cannot after more than twenty years' actual possession and working of claim, involving considerable expenditure of money and improvement of property for quarrying purposes, be deprived of possession by one who surreptitiously locates and files placer mining claim covering land, particularly in view of federal statute entitling claimant to patent after possession and working of claim for period of limitation provided by state law. Springer v. Southern Pac. Co. (1926) 67 U 590, 248 P 819.

Mining patent.

Attorney who bought mining patent of bankrupt mining company, a former client, at trustee's sale and paid all creditors of bankrupt in full except one, whose claim, however, was fully discharged, did not hold patent as trustee for latter creditor. Lee v. Nelson (1926) 68 U 575, 251 P 371.

Words and phrases defined.

"Veins or lodes" are lines or aggregations of metal imbedded in quartz or other rock in place, consisting of a strip of mineral-bearing rock within defined boundaries in the general mass of the mountain, which must be continuous and without interruption, bounded by country rock mineralized to no greater extent than the general condition of the vicinity. Grand Central Min. Co. v. Mammoth Min. Co. (1905) 29 U 490, 83 P 648, dismissed for want of jurisdiction in 213 US 72, 53 L Ed 702, 29 S Ct 413.

Rock or matter of any kind, in order to constitute a "vein or lode," must be metalliferous and contain such mineral value as will distinguish it from the country rock, especially where no well-defined walls appear. Grand Central Min. Co. v. Mammoth Min. Co. (1905) 29 U 490, 83 P 648, dismissed for want of jurisdiction in 213 US 72, 53 L Ed 702, 29 S Ct 413.

The term "mines" is not confined to subterranean excavations or workings, nor is the term "minerals" confined to metalliferous ores. Nephi Plaster & Mfg. Co. v. Juab County (1907) 33 U 114, 93 P 53, 14 LRA (NS) 1043.

Gypsum is mineral and constitutes mineral deposit under mineral laws. Nephi Plaster & Mfg. Co. v. Juab County (1907) 33 U 114, 93 P 53, 14 LRA (NS) 1043.

Collateral References.

Mines and Minerals ⇦ 18.

58 CJS Mines and Minerals § 44.

Lode claims, 54 AmJur 2d 224, Mines and Minerals § 40.

Breach of obligation to drill exploratory oil or gas wells, right and measure of recovery for, 4 ALR 3d 284.

"Discovery," under mining laws, of radioactive minerals such as uranium, 66 ALR 2d 560.

Grant, lease, exception, or reservation of oil and/or gas rights as including oil shale, 61 ALR 3d 1109.

Lode or vein, what is "top" or "apex" of, 1 ALR 418.

Law Reviews.

Government Initiated Contests Against Mining Claims, 1968 Utah L. Rev. 102.

Permits and Approvals Required to Develop an Energy Project in Utah, 1979 Utah L. Rev. 747.

40-1-2. Discovery monument — Notice of location — Contents. The locator at the time of making the discovery of such vein or lode must erect a monument at the place of discovery, and post thereon his notice of location which shall contain:

(1) The name of the claim.

(2) The name of the locator or locators.

(3) The date of the location.

(4) If a lode claim, the number of linear feet claimed in length along the course of the vein each way from the point of discovery, with the width claimed on each side of the center of the vein, and the general course of the vein or lode as near as may be, and such a description of the claim, located by reference to some natural object or permanent monument, as will identify the claim.

(5) If a placer or mill site claim, the number of acres or superficial feet claimed, and such a description of the claim or mill site, located by reference to some natural object or permanent monument, as will identify the claim or mill site.

History: R.S. 1898, § 1496; L. 1899, ch. 14, § 2; C.L. 1907, § 1496; C.L. 1917, § 3891; R.S. 1933 & C. 1943, 55-1-2.

Conflicting claims of land and mineral patentee.

Mineral patent is conclusive (as against collateral attack) of valid location of claim prior to its issuance, but not as to particular date of location; and in order to have mineral patent relate back to date of location where land patent (nonmineral) was issued to another prior to issuance of mineral patent, latter patentee must prove valid location prior to date of nonmineral patent. Gibbons v. Frazier (1926) 68 U 182, 249 P 472.

Land patent (nonmineral) issued years prior to mineral patent is superior thereto even though attempted location was made prior to issuance of nonmineral patent, where location was insufficient and invalid because of lack of proof of discovery of mineral and bounding of claim. Gibbons v. Frazier (1926) 68 U 182, 249 P 472.

Determination of location and strike.

In determining the location and strike of a vein, the geological features of the adjacent country, so far as in evidence, will be considered by the court. Grand Central Min. Co. v. Mammoth Min. Co. (1905) 29 U 490, 83 P 648, dismissed for want of jurisdiction in 213 US 72, 53 L Ed 702, 29 S Ct 413.

Differences in recorded description and actual location.

Minor differences in the description of a claim as recorded from the actual location will not render a claim invalid where there is sufficient compliance with the statutory requirements both at the place of location and as filed with the county recorder. Powell v. Atlas Corp. (1980) 615 P 2d 1225.

Location notice.

A notice of location which describes the ground in such a way as to be incapable of identification is insufficient. Darger v. Le Sieur (1893) 9 U 192, 33 P 701, affirming 8 U 160, 30 P 363, and applying 2 Comp. Laws 1888, § 3241.

In action to determine right of possession to certain conflict areas arising out of locations of mineral lands, wherein it appeared that defendant's location notice posted and filed of record failed to describe land intended to be claimed, and no amended location notice was filed until after plaintiffs had located land, it was held that plaintiffs had met requirements of both federal and state statutes relative to claim and were entitled to conflict areas. Miehlich v. Tintic Standard Min. Co. (1922) 60 U 569, 211 P 686.

Priority of location cannot be maintained by amendment if in fact the amendment amounts to a new and different location. However, neither niceties of description in original notices of location nor more than reasonable accuracy in the staking of claims is required to effectuate a valid location. Prospectors are not engineers nor does the law expect them to be. However, the law does require sufficient detail and accuracy in the notice as recorded to allow location of the claim upon reasonable effort. Cranford v. Gibbs (1953) 123 U 447, 260 P 2d 870.

Plaintiff's placer claim notices definitely singled out a particular area with the aid of estimated distances and with reference to natural features, and defendants could not rely upon technical deficiencies to defeat the claim. Fuller v. Mountain Sculpture (1957) 6 U 2d 385, 314 P 2d 842.

Requisites of location of placer claim.

Requisites of valid location of placer claim are: (1) discovery of mineral within the claim; (2) the marking of the location on the ground so that its boundaries may be readily traced. Gibbons v. Frazier (1926) 68 U 182, 249 P 472.

What constitutes valid location.

Proper staking or marking of mining claim completed valid location of ground, and thereafter it was not incumbent on claimant, as matter of law, to preserve standing of stakes against meddlesome persons or trespassers in order to preserve its rights as against subsequent locator seeking to acquire mining rights in premises. Miehlich v. Tintic Standard Min. Co. (1922) 60 U 569, 211 P 686.

Collateral References.

Mines and Minerals ⇦ 17(1).
58 CJS Mines and Minerals § 42.
Discovery, 54 AmJur 2d 223 et seq., Mines and Minerals § 39 et seq.

40-1-3. Boundaries to be marked. Mining claims and mill sites must be distinctly marked on the ground so that the boundaries thereof can be readily traced.

History: R.S. 1898, § 1497; L. 1899, ch. 14, § 3; C.L. 1907, § 1497; C.L. 1917, § 3892; R.S. 1933 & C. 1943, 55-1-3.

Cross-References.

Plats and subdivisions generally, 57-5-1 et seq.

Courses and distances.

The courses and distances in field notes, and in patent of mining claim, were not conclusive of question of true location of established monuments of official survey. Grand Central Min. Co. v. Mammoth Min. Co. (1909) 36 U 364, 104 P 573, Ann Cas 1912A, 254.

Effect of noncompliance.

Possession was no factor in suit to quiet title to mining claims where plaintiffs' claims were never legally located. Allen v. Radium King Mines, Inc. (1960) 11 U 2d 28, 354 P 2d 578.

Collateral References.

Mines and Minerals ⇦ 20(1).
58 CJS Mines and Minerals § 48.

40-1-4. Copy of location notice to be recorded. Within thirty days after the date of posting the location notice upon the claim the locator or locators, or his or their assigns, must file for record in the office of the county recorder of the county in which such claim is situated a substantial copy of such notice of location. Such notice of location shall not be abstracted unless a subsequent conveyance affecting the same property is filed for record, whereupon it shall be abstracted.

History: R.S. 1898, § 1498; L. 1899, ch. 14, § 4; C.L. 1907, § 1498; L. 1909, ch. 56, § 1; C.L. 1917, § 3893; R.S. 1933 & C. 1943, 55-1-4.

Actual notice.

Actual notice of an amended claim and another's exclusive possession is equivalent to valid record notice. Atherley v. Bullion Monarch Uranium Co. (1959) 8 U 2d 362, 335 P 2d 71.

Failure to record.

A locator's title to a claim which was properly initiated under the mining laws was not forfeited by a failure to record. Atherley v. Bullion Monarch Uranium Co. (1959) 8 U 2d 362, 335 P 2d 71.

Collateral References.

Mines and Minerals ⇦ 22.
58 CJS Mines and Minerals § 56.
Record of location, 54 AmJur 2d 236 et seq., Mines and Minerals § 53 et seq.

40-1-5. Assessment work on group claims. Every person owning a group of claims and doing the development or assessment work for the group at one point shall post a notice upon each claim at the discovery monument stating where such work is being done, and also post a notice at the entrance of the workings where such work is done, stating the names of the claims for which the work is done.

History: R.S. 1898, § 1499; L. 1899, ch. 14, § 5; C.L. 1907, § 1499; C.L. 1917, § 3894; R.S. 1933 & C. 1943, 55-1-5.

Notice by affidavit.

It is not necessary that the work be performed openly and notoriously in order to

give notice to subsequent claimants that it is being done. Notice that the work is being done in accordance with the assessment statute is given in the filing of the affidavit in the office of the county recorder and posting. Chamberlain v. Montgomery (1953) 1 U 2d 31, 261 P 2d 942.

Collateral References.

Mines and Minerals ⇦ 23(1).
58 CJS Mines and Minerals § 67.
Annual work, 54 AmJur 2d 253 et seq., Mines and Minerals § 68 et seq.

40-1-6. Affidavit of work done. The owner of any quartz lode or placer mining claim who shall do or make, or cause to be done or made, the annual labor or improvements required by the laws of the United States, in order to prevent a forfeiture of the claim must, within thirty days after the completion of such work or improvements, file in the office of the county recorder of the county in which such claim is located his affidavit, or affidavits of the persons who performed or directed such labor or made or directed such improvements, showing:

(1) The name of the claim and where situated.

(2) The number of days' work done and the character and value of the improvements placed thereon.

(3) The date or dates of performing such labor and making such improvements, and number of cubic feet of earth or rock removed.

(4) At whose instance or request such work was done or improvements made.

(5) The actual amount paid for such labor and improvements, and by whom paid.

(6) That the notices were posted as required by section 40-1-5.

Such affidavits, or duly certified copies thereof, shall be prima facie evidence of the facts therein stated.

History: R.S. 1898, § 1500; L. 1899, ch. 14, § 6; C.L. 1907, § 1500; C.L. 1917, § 3895; R.S. 1933 & C. 1943, 55-1-6.

Assessment work.

Forfeitures are not favored and failure to do required assessment work does not, ipso facto, work a forfeiture but may render claims subject to loss if there is valid relocation before resumption of work. Knight v. Flat Top Min. Co. (1957) 6 U 2d 51, 305 P 2d 503.

Proof of assessment work.

The filing of the affidavit required by this section supports a finding that the work on a claim has been done in accordance with the requirements of 30 U. S. C. § 28 of the Mining Laws of the United States. Chamberlain v. Montgomery (1953) 1 U 2d 31, 261 P 2d 942.

Collateral References.

Mines and Minerals ⇦ 23(4).
58 CJS Mines and Minerals § 75.

40-1-7. District recorders — Office abolished. From and after the termination of the office of any mining district recorder now holding office in this state such district shall be abolished and such office shall become vacant.

History: Code Report; R.S. 1933 & C. 1943, 55-1-7.

Cross-References.

Recording conveyances generally, 57-3-1 et seq.

Collateral References.

Mines and Minerals ⇦ 22.
58 CJS Mines and Minerals § 56.
Record of location, 54 AmJur 2d 236-239, Mines and Minerals §§ 52-56.

40-1-8. Vacancy and removal — County recorder to receive records. Whenever there is a vacancy in the office of recorder of any mining district, or the person holding such office shall remove from the district leaving therein no qualified successor in office, or whenever from any cause there is no person in such district authorized to retain the custody and give certified copies of the records, it shall be the duty of the person having custody of the records to deposit the same in the office of the county recorder of the county in which such mining district, or the greater part thereof, is situated, and the county recorder shall take possession of such records, and is hereby authorized to make and certify copies therefrom, including any other copies of records and papers in his office pertaining to mining claims, and such certified copies shall be receivable in evidence in all courts and before all officers and tribunals. The production of a certified copy so made shall be, without further proof, evidence that such records were properly in the custody of the county recorder.

History: R.S. 1898, § 1502; L. 1899, ch. 14, § 15; C.L. 1907, § 1506x2; C.L. 1917, § 3904; R.S. 1933 & C. 1943, 55-1-8.

Cross-References.

County recorder, powers and duties, 17-21-1 et seq.

40-1-9. County recorder may certify district records. Where books, records and documents pertaining to the office of mining district recorder have been deposited in the office of any county recorder he is authorized to make and certify copies therefrom, and such certified copies shall be receivable in all tribunals and before all officers of this state in the same manner and to the same effect as if such records had been originally filed or made in the office of the county recorder.

History: L. 1899, ch. 14, § 11; C.L. 1907, § 1505; C.L. 1917, § 3900; R.S. 1933 & C. 1943, 55-1-9.

40-1-10. Certified copies of records evidence. Copies of notices of location of mining claims, mill sites and tunnel sites heretofore recorded in the records of the several mining districts, and copies of the mining rules and regulations in force therein and recorded, when duly certified by the district or county recorder, shall be receivable in all tribunals and before all officers of this state as prima facie evidence.

History: L. 1899, ch. 14, § 9; C.L. 1907, § 1504; C.L. 1917, § 3899; R.S. 1933 & C. 1943, 55-1-10.

Compiler's Notes.

This section was derived from, and is substantially the same as, section 1 of Act of February 18, 1876, adopted by territorial legislature. Comp. Laws 1876, p. 399, § 1222.

Cross-References.

Evidence generally, 78-25-1 et seq.

Public and private writings, admissibility, 78-26-1 et seq.

40-1-11. Interfering with notices, stakes or monuments — Penalty. Any person who willfully or maliciously tears down or defaces a notice posted on a mining claim, or takes up or destroys any stake or monument

marking any such claim, or interferes with any person lawfully in possession of such claim, or who alters, erases, defaces or destroys any record kept by a mining district or county recorder, is guilty of a misdemeanor, and shall be punished by a fine of not less than $25 nor more than $100, or by imprisonment for not less than ten days nor more than six months, or by both such fine and imprisonment.

History: R.S. 1898 & C.L. 1907, § 1535; C.L. 1917, § 3937; R.S. 1933 & C. 1943, 55-1-11.

Compiler's Notes.

Except for minor grammatical changes, this section is identical with Comp. Laws 1876, § 1219; 2 Comp. Laws 1888, § 1291.

Cross-References.

Trespass, 76-6-206.

Collateral References.

Mines and Minerals ⇦ 19(1).
58 CJS Mines and Minerals § 45.
Laying out claim, 54 AmJur 2d 236, Mines and Minerals § 52.

40-1-12. Trespassing on claims — Removing ores — Penalty. When damages are claimed for the extraction or selling of ore from any mine or mining claim and the defendant, or those under whom he claims, holds, under color of title adverse to the claims of the plaintiff, in good faith, then the reasonable value of all labor bestowed or expenses incurred in necessary developing, mining, transporting, concentrating, selling or preparing said ore, or its mineral content, for market, must be allowed as an offset against such damages; provided, however, that any person who, wrongfully entering upon any mine or mining claim and carrying away ores therefrom, or wrongfully extracting and selling ores from any mine, having knowledge of the existence of adverse claimants in any mine or mining claim, and without notice to them, knowingly and willfully trespasses in or upon such mine or mining claim and extracts or sells ore therefrom shall be liable to the owners of such ore for three times the value thereof without any deductions either for labor bestowed or expenses incurred in removing, transporting, selling or preparing said ore, or its mineral content for market.

History: R.S. 1898 & C.L. 1907, § 1536; C.L. 1917, § 3938; R.S. 1933, 55-1-12; L. 1937, ch. 63, § 1; C. 1943, 55-1-12.

Compiler's Notes.

The 1937 amendment rewrote this section which read: "Any person, wrongfully entering upon any mine or mining claim and carrying away ores therefrom, or wrongfully extracting and selling ores from any mine, shall be liable to the owners of such ore for three times the value thereof."

Application of statute.

In an action for wrongful removal of ore, the provisions of this section did not apply to a party lawfully in possession of and extracting ore from a mine under a valid lease. Even Odds, Inc. v. Nielson (1968) 22 U 2d 49, 448 P 2d 709.

Purpose of statute is to impose penalty upon and discourage the knowing and willful trespass upon mining claims and the wrongful extracting of ore therefrom; statute was inapplicable to party in lawful occupation of mine under valid lease where there was a bona fide dispute as to right of possession. Even Odds, Inc. v. Nielson (1968) 22 U 2d 49, 448 P 2d 709.

Condemnation of adjoining land.

Copper mining company which had easement to dump residue on certain part of adjoining claim and remove same at any time was entitled to condemn adjoining property for excavation of tunnel and erection of pipeline to divert waters from dump containing commercially valuable deposits of copper as a result of seepage through residue in dump, but was not entitled to pursue waters

percolating through others' grounds after leaving dump, under statute similar to 78-34-1(5); and where adjoining mining company had been precipitating copper from waters after percolating through dump, copper company was entitled to immediate possession under statute similar to 78-34-9, pending final determination of condemnation proceeding. Utah Copper Co. v. Montana-Bingham Consol. Min. Co. (1926) 69 U 423, 255 P 672.

Mineral content of water.

Where owner of land conveyed it to defendant's predecessor in title reserving minerals on or in land conveyed, and subsequently conveyed mineral rights to plaintiff, held, in action by plaintiff to quiet title to water containing copper, that such water was not mineral, and hence, defendant was entitled to remove copper from water. Stephens Hays Estate v. Togliatti (1934) 85 U 137, 38 P 2d 1066.

Collateral References.

Trespass ⇦ 60.

87 CJS Trespass §§ 134 to 137.

Right of trespasser to credit for expenditures in producing, as against his liability for value of, oil or minerals, 21 ALR 2d 380.

Severance of title or rights to oil and gas in place from title to surface, 146 ALR 880.

40-1-13. Prospecting permits — Term — Conditions. To further the development of the mineral resources of the state, the state land board is hereby authorized to issue prospecting permits to citizens of the United States upon any lands in which the state owns the mineral rights, and to grant to the permittee the exclusive right to prospect for minerals upon said lands, together with the exclusive right at any time during the life of the permit to have a mineral lease issued to him upon said lands in accordance with the laws of this state relating to mineral leases. No permit shall be issued for a longer period than one year, but the board shall make yearly renewals as long as the permittee shall comply with the terms of the permit. No person or group of persons shall be entitled to a permit covering more than one hundred and sixty acres within any one township, and the said one hundred and sixty acres shall be described in square tracts of not less than ten acres each. The permittee shall cause not less than $250 worth of development work to be performed upon the lands in each township every six months, and he shall not remove therefrom any ore until a mineral lease is issued to him by the land board. All permits shall be in writing and attested and signed by the executive secretary of the land board.

History: L. 1935, ch. 45, § 1; C. 1943, 55-1-13.

Title of Act.

An act authorizing the state land board to issue prospecting permits and providing the terms and conditions thereof. — Laws 1935, ch. 45.

Effective Date.

Section 2 of Laws 1935, ch. 45 provided that the act should take effect on approval. Approved March 26, 1935.

Collateral References.

Mines and Minerals ⇦ 6.

58 CJS Mines and Minerals § 129.

Permits, 54 AmJur 2d 280, Mines and Minerals § 100.

Law Reviews.

Equal Protection and the Supremacy Clause Limitations on State Legislation Restricting Aliens, 1970 Utah L. Rev. 136.

CHAPTER 2

COAL MINES

Section

40-2-1. Duties of industrial commission.

40-2-1. Duties of industrial commission. For the purpose of securing an efficient and thorough inspection of all coal and hydrocarbon mines within the state, coal mine inspection and all matters relating thereto shall be under the control of the industrial commission.

History: C.L. 1917, § 3076 [9]; L. 1921, ch. 67, § 1; R.S. 1933 & C. 1943, 55-2-1.

Cross-References.

Children, employment generally, 34-23-1 et seq.

Eight-hour day, 34-21-2.

Employment of children in mines, Const. Art. XVI, § 3, 34-22-1.

Health of miners, Const. Art. XVI, § 6.

Collateral References.

Mines and Minerals ⇦ 92.9.

58 CJS Mines and Minerals § 240.

Generally, 54 AmJur 2d 183 et seq., Mines and Minerals § 1 et seq.

40-2-2. Right of visitation and inspection. Every owner, agent, manager or lessee of any coal or hydrocarbon mine, whenever it is in active operation, shall freely admit any representative of the industrial commission to such mine, on the exhibition of his certificate of appointment, for the purpose of making the examinations and inspections provided for in this chapter, and shall render any necessary assistance for such inspection; but such representative shall not unnecessarily obstruct the working of the mine. Every owner, agent, manager or lessee of such mine refusing to so admit such representative is guilty of a misdemeanor, and shall be punished by a fine of not less than $50 nor more than $500 for every such offense.

History: C.L. 1907, § 1511; C.L. 1917, § 3914; R.S. 1933 & C. 1943, 55-2-2.

40-2-3. Mine owners to make maps of workings — Annual reports. The owner, agent, manager or lessee of every coal or hydrocarbon mine shall make, or cause to be made, an accurate map or plan of the workings

of such mine on a scale of 100 feet to the inch, which shall show all the openings or excavations, shafts, tunnels, slopes, planes, entries, cross headings and rooms therein, and the direction of the air currents and the water system therein, and shall accurately show the boundary lines between the mine and adjoining mines. Such map or plan, or a true copy thereof, shall be furnished to the industrial commission, and one copy shall be kept at such mine for the inspection of the industrial commission or its representatives. The owner, agent, manager or lessee, at least once in every six months, shall cause to be placed on the map or plan an accurate showing of all additional excavations which have been made in the mine. The several maps of plans of mines which are furnished to the industrial commission shall remain in its care and shall remain the property of the state, but in no case shall any copy of any of them be made without the consent of the owner, agent, manager or lessee. If the industrial commission shall find or have good reason to believe that any map or plan of any mine made or furnished in pursuance of the provisions of this section is materially inaccurate or imperfect, it is authorized to cause a correct plan or map of such mine to be made at the expense of the owner, agent, manager or lessee thereof; provided, that if the map or plan which was claimed to have been inaccurate shall be found to be practically correct, the state shall pay the expense of making such new map or plan. All persons operating coal or hydrocarbon mines shall, on or before the fifteenth day of December of each year, furnish the industrial commission a statement of the output of each mine, distribution of such product, pounds of powder used, number and nationality of men employed, days worked, number of fatal and nonfatal accidents, from the first day of December of the preceding year to November 30, of the current year. Each owner, agent or lessee shall within thirty days after opening a new mine notify the industrial commission, giving name and address of the person, company or corporation so opening such mine, together with its location and the character of such mine and opening.

History: R.S. 1898, § 1515; C.L. 1907, § 1512; L. 1911, ch. 132, § 1; C.L. 1917, § 3915; R.S. 1933 & C. 1943, 55-2-3.

40-2-4. Provision for safe egress. It shall be unlawful for the owner-operator or superintendent of any such mine to employ any person to work therein unless there are in connection with every seam or stratum of coal worked therein not less than two openings or outlets, separated by a stratum of not less than 150 feet at surface and not less than 30 feet at any place, at which safe and distinct means of ingress and egress shall at all times be available to the persons so employed. The escapements, shafts or slopes shall be fitted with safe and available appliances by which the employees of the mine may readily escape in case an accident occurs deranging the hoisting machinery at the outlets. In slopes used as haulage

roads, where the dip or incline is ten degrees or more, there must be provided a separate traveling way, which shall be maintained in a safe condition for travel and kept free from dangerous gases. No inflammable structure, other than a frame to sustain pulleys or sheaves, shall be erected over the entrance to any mine; and no inflammable structure for the purpose of storing coal shall be erected within 200 feet of any such opening; but this chapter shall not be construed to prohibit the erection of a fan and its approaches for the purpose of ventilation, or of a trestle for the transportation of cars from any slope or other opening. All entrances to any place, not in the actual course of working, where explosive gas is known to exist shall be properly fenced across the whole width so as to prevent all persons from entering the same. Hand rails and sufficient safety catches shall be attached to, and a sufficient cover overhead shall be provided on, every cage used for lowering or hoisting persons in any shaft. The ropes, safety catches, links and chains shall be carefully examined every day that they are used, by a competent person employed for that purpose by the mine owner, agent, manager or lessee, and any defect therein found shall be immediately remedied.

History: R.S. 1898, §§1515, 1517, 1521; C.L. 1907, §1513; C.L. 1917, §3916; R.S. 1933 & C. 1943, 55-2-4.

Cross-References.

Safety cages, 40-5-3.

40-2-5. Ventilation. Every owner, agent, manager or lessee of a coal or hydrocarbon mine shall provide and maintain a constant and adequate supply of pure air and to that end the following provisions shall apply:

(1) It shall be unlawful to use a furnace for the purpose of ventilating any mine.

(2) The ventilation current shall be conducted and circulated to the face of each working place through the entire mine in sufficient quantities to dilute, render harmless and sweep away smoke and noxious or dangerous gases, and to such an extent that all working places and traveling roads shall be in a safe condition for working and traveling therein.

(3) All worked-out or abandoned parts of any mine in operation so far as practicable shall be kept free from dangerous bodies of gases or water; and if found impracticable to keep the entire mine free from dangerous accumulation of standing gases or water, the industrial commission shall be immediately notified.

(4) Every mine wherein are employed more than seventy-five persons must be divided into two or more districts. Each district shall be provided with a separate split of pure air, and the ventilation shall be so arranged that not more than seventy-five persons shall be employed at the same time in any one current or split of air.

(5) All crosscuts, when it becomes necessary to close them permanently, shall be substantially closed whenever practicable with brick or other suitable material laid in mortar or with cement, but in no case shall such crosscut stopping be constructed of plank, except for temporary purposes.

(6) All doors used in assisting or in any way affecting the ventilation shall be so hung and adjusted that they will close automatically; main doors regulating the principal air currents of the mine shall be so placed, in all cases where it is practicable, that when one door is open another, which has the same effect upon the same current of air, will be and remain closed.

(7) All permanent air bridges shall be built when and as circumstances require and shall be built of fireproof material and be of such strength as the circumstances may require.

(8) The quantities of air in circulation shall be ascertained with an anemometer or other efficient instrument; such measurement to be made by the inside foreman or other competent person at least once every week and a report of air measurements to be forwarded to the industrial commission, together with a statement of the number of persons employed in each district, on or before the twelfth day of each month for the preceding month.

(9) For the purpose of properly ventilating rooms and entries in a coal mine crosscuts in rooms shall be not more than 100 nor less than 50 feet apart, and crosscuts in the main entrance shall not, except in cases of urgent necessity according to the opinion of the industrial commission, be less than 75 feet nor more than 200 feet apart.

History: R.S. 1898, § 1518; C.L. 1907, § 1515; L. 1911, ch. 132, § 1; C.L. 1917, § 3918; R.S. 1933 & C. 1943, 55-2-5; L. 1945, ch. 83, § 1; 1949, ch. 64, § 1.

Compiler's Notes.

The 1945 amendment increased the minimum quantity of air from 100 cubic feet per minute to 150 cubic feet per minute.

The 1949 amendment deleted "wherein explosive gases are generated" at the end of subd. (1); deleted a subd. (2) providing for minimum quantity of air; redesignated former subds. (3) through (10) as subds. (2) through (9); and inserted "when and as circumstances require and shall be built of fireproof material" in subd. (7).

40-2-6. Sprinkling system. Every owner, agent, manager or lessee of a coal or hydrocarbon mine shall provide and maintain a water system for the purpose of conducting water to the face of each working place and throughout the entire open part of the mine in sufficient quantities for sprinkling purposes to wet down dust arising and accumulating in and around the mine. It shall be the duty of the superintendent, mine foreman and the industrial commission to see that this is done; provided, that in mines or parts of mines where by reason of naturally wet conditions or moisture derived from the introduction of steam into the air currents, or both, such sprinkling may not be necessary it shall not be required.

History: C.L. 1907, § 1516; C.L. 1917, § 3919; R.S. 1933 & C. 1943, 52-2-6.

40-2-7. Timbering. It shall be the duty of every owner, operator, superintendent and mine foreman to furnish to the miners all props, ties, rails and timbers necessary for safe mining in coal and hydrocarbon mines, and for the protection of the lives of the workmen. Such props, ties, rails and timbers shall be suitably prepared and shall be delivered within 100 feet

of the face of the room or entry and other working places, free of charge. Whenever underhand stoping is used to extract hydrocarbon ore, an efficient system of timbering, approved by the industrial commission, shall be enforced.

History: R.S. 1898, § 1519; C.L. 1907, § 1517; L. 1911, ch. 132, § 1; C.L. 1917, § 3920; R.S. 1933 & C. 1943, 55-2-7.

Collateral References.

Duty of an employer with respect to the timbering of a mine, 15 ALR 1380, 1430.

40-2-8. General rules for operators and employees. The following general rules shall be observed by every owner, operator, superintendent, mine foreman and employee of a coal or hydrocarbon mine:

(1) Every owner and operator shall use every reasonable precaution to insure the safety of the workmen in all cases, and when employing more than five men underground shall place the underground workings thereof under the charge and daily supervision of a person who shall be known as "mine foreman," and who must hold a mine foreman's certificate.

In coal mines not employing more than five men on any one shift in a twenty-four hour period, the operator or owner must designate a man known as a mine foreman to supervise the operation of that mine while men are on shift. Such authorized foreman must have had at least five years' underground experience in coal mines and before being placed in charge must undergo an oral examination given by a coal mine inspector to determine his competence. If he successfully passes said examination to the satisfaction of the mine inspector he will then be issued an oral examination certificate which shall only apply to that particular mine.

In mines classified as "gassy" by the industrial commission regardless of the number of men employed therein on any one shift, the owner-operator must employ a certified mine foreman to supervise the underground operations while men are on shift and said foreman must have successfully passed the examination given by the coal mine examining board and have been issued a certificate by the industrial commission.

Should an oral examination certificate be issued to a mine foreman in a nongassy mine and the status or classification of the mine changes from "nongassy" to "gassy" the oral examination certificate is automatically revoked and none other than a regular certified mine foreman shall be employed.

Where not more than five men are employed on any one shift and a mine foreman is certified orally, this does not exempt the owner or certified man from any provisions of the general coal mine safety orders but they are subject to all of them as is the case in any coal or hydrocarbon mine operating in the state of Utah.

(2) All accessible parts of abandoned portion of a mine in which explosive gases have been found or are known to exist shall be carefully examined by the mine foreman or his assistants at least once in each week, and danger existing therein from such gases shall be removed as soon as possible. A report of each examination shall be recorded in a book kept for that purpose, signed by the person making the examination.

(3) In any mine the mine foreman or fire bosses shall make a careful examination every morning of all working places and traveling ways and all other places which might endanger the safety of the workmen, within three hours prior to the time at which the workmen enter the mine. Such examination shall be made with the safety lamp. No person, except those whose presence is necessary to prepare the mine for the entrance of the workmen, shall enter the mine, or any part thereof, until the mine foreman or fire boss of his district shall report to him that his place is in a safe condition. The mine foreman or fire boss making such examination shall record the result of his examination in a book kept for that purpose, which shall be open to the inspection of the representatives of the industrial commission and all employees.

(4) In any working place where there is likely to be an accumulation of explosive gases no light or fire other than locked flame safety lamps or approved permissible electric storage battery lamps shall be allowed or used. Whenever such lamps are required in any mine, they shall be the property of the owner or operator, and a competent person shall be appointed for the purpose of examining every such lamp, which examination shall be made immediately before it is taken into the mine for use. He shall clean, lock and otherwise ascertain if it is safe for use. In all hydrocarbon mines only approved permissible electric storage battery lamps shall be used for lighting purposes; the style of such lamps to be approved by the industrial commission. Every such owner, agent, lessee or operator of coal or hydrocarbon mines, when working the same in close proximity to an abandoned mine or part of a mine containing water or fire damp, shall cause bore holes to be kept at least twenty-five feet in advance of the working face and the sides of all working places in such mines known to be approaching old or abandoned mines, or other mines containing water or fire damp. Such holes shall not be more than twenty-five feet apart, and shall be twenty-five feet in depth and at an angle of at least twenty-five degrees from the center hole.

(5) Every miner or other person having charge of a working place in any mine shall keep the roof and sides thereof properly secured by timbering or otherwise so as to prevent such roof and sides from falling and injuring him or his fellow workmen; and he shall not do any work or permit any work to be done under loose rock or dangerous material, except for the purpose of securing the same.

(6) No more than ten persons shall be hoisted or lowered at any one time in any shaft or slope. This, however, shall not prohibit the hoisting or lowering of ten or more persons at any one time on slopes where five or more loaded cars are regularly hoisted.

(7) No person in a state of intoxication shall be allowed to go into or loiter about the mine. It shall be a misdemeanor for any person under the influence of intoxicating liquor to enter any mine or any building connected therewith where miners or other workmen are employed or to loiter about any mine or to carry intoxicating liquor into any mine.

(8) Any miner or other workman who shall discover anything wrong with the ventilating current, or with the condition of the roof, sides, timbers or roadway, or with any other part of the mine in general, such as would lead him to suspect danger to himself or his fellow workmen or the property of his employer shall as soon as possible report the same to the mine foreman or other person in charge of that portion of the mine.

(9) Any person who knowingly or willfully damages or, without proper authority, removes or renders useless any fencing, means of signaling, apparatus, instrument or machine, or who throws open or obstructs any airway, or opens any ventilating door and does not leave the same closed, or enters a place in or about a mine against caution, or carries fire, open lights or matches in places where safety lamps are used, or handles, without proper authority, or disturbs any machinery or cars, or does any other act or thing whereby the lives or health of persons or the security of property in or about the mine is endangered, is guilty of a misdemeanor.

(10) Not more than one day's supply of explosives shall be stored in a mine, provided, however, where a mine uses less than 300 pounds of explosives in any one day, an amount of explosives not in excess of 300 pounds may be stored in such mine, and a workman shall not have at any time in any place more than six and one-quarter pounds of powder; provided, that under special conditions a larger amount may be allowed in a mine for immediate use when approval of such action is made in writing by the industrial commission.

(11) Every person who has explosives in a mine shall keep it in a box made of nonconducting material securely locked, and such box shall be kept at least twenty-five feet from the tracks or trolley wires in all cases where room at such distance is available.

(12) In charging holes for blasting in coal, slate or rock only wooden tamping rods shall be used.

(13) The charge of powder or any other explosive in coal, slate or rock which has missed fire shall not be withdrawn or the hole reopened, except where such holes are tamped with wet wood pulp, and it shall be unlawful for the purpose of blasting coal to tamp shot holes with drillings, coal dust or small pieces of coal, but it shall be the duty of every superintendent, foreman or lessee to furnish clay or earth tamping, except when wood pulp is used.

(14) Before commencing work, and also after the firing of every blast, the miner working a room, or other place in the mine, shall enter such room or place to examine and ascertain its conditions, and his assistant shall not go to the face of such room or place until the miner has examined the same and found it to be safe.

(15) When more than five men are employed, no person shall be employed to blast coal or rock unless such person is certified.

In nongassy mines employing not more than five men, no person shall be employed to blast coal or rock unless such person has undergone and

successfully passed an oral examination given by a state coal mine inspector, and an oral certificate issued to him authorizing him to do such blasting.

(16) Every passageway equipped with mechanical haulage and used by persons as a regular traveling way and at the same time for transportation of coal or other material shall be of sufficient width to permit persons to pass moving cars with safety. If found impracticable to make any passageway of sufficient width, then holes of ample dimensions, and not more than 150 feet apart, shall be made on one side of the passageway. Passageways and safety holes shall be kept free from obstruction, and the roof and sides of the same shall be made secure. Safety holes shall be made at the bottom of all slopes and planes when necessary, and kept free from obstruction to enable the footmen to escape readily in case of danger.

(17) It shall be unlawful for any owner, operator, superintendent or mine foreman of any mine which generates explosive gases to employ any person who is not competent to understand the regulations of any mine evolving explosive gases.

(18) No person shall be permitted to enter any dry gilsonite or elaterite mine with any kind of light other than an electric or other safety lamp.

(19) For the purpose of making known the provisions of this section to all persons employed in and around mines the owner and operator of every coal and hydrocarbon mine shall post in a conspicuous place at or near the entrance of the mine, where they may be conveniently read by all persons employed therein, these rules, and keep the same posted at all times.

(20) Whenever the industrial commission discovers in any mine in which blasting of coal is allowed during working hours that the air is becoming vitiated by unnecessary blasting of coal it may regulate the same, and designate at what hour of the day blasting may be permitted; provided, that where coal is shot off the solid without undermining at least two periods of for shooting shall be allowed during each working day.

(21) It shall be unlawful for any owner, operator, superintendent, mine foreman or any employee of any mine which generates explosive gases to remove any accumulated body of gases by wafting or brushing. All such bodies of gases must be removed from the mine by approved methods of ventilation.

History: C.L. 1907, § 1518; L. 1911, ch. 132, § 1; 1913, ch. 78, § 1; C.L. 1917, § 3921; R.S. 1933 & C. 1943, 55-2-8; L. 1949, ch. 64, § 1.

Compiler's Notes.

The 1949 amendment inserted "and when employing more than five men underground" in subd. (1); added the last four paragraphs to subd. (1); deleted "known to generate explosive gases" after "In any mine" in subd. (3); inserted "or approved permissible electric storage battery lamps" in the first sentence of subd. (4); deleted a provision relative to lamps of fire bosses and lamps to be used in hydrocarbon mines in subd. (4); added the penalty clause to subd. (7); and rewrote the provisions for handling of explosives.

Cross-References.

Examination and appointment of mine foremen, 40-2-14.

Safety cages, 40-5-3.

Storage of explosives, 40-5-4.

Storage of explosives.

Violation of provisions relating to storage of explosives in mine renders mine owner-operator liable for injuries proximately caused to an invitee by such violation. Skerl v. Willow Creek Coal Co. (1937) 92 U 474, 69 P 2d 502.

Collateral References.

Liability for property damage by concussion from blasting, 20 ALR 2d 1372.

Liability of mine operator for damage to surface structure by removal of lateral support, 32 ALR 2d 1329.

Right of mineral lessee to deposit top soil, waste materials, and the like upon lessor's additional land not being mined, 26 ALR 2d 1453.

DECISIONS UNDER FORMER LAW

Explosive gases.

Former subdivision requiring that all mines known to generate explosive gases be inspected every morning applied to a mine in which explosive gases were discovered on one occasion, whether or not they existed in the mine in sufficient quantity to make it unsafe or dangerous in the opinion of experts. Eleganti v. Standard Coal Co. (1917) 50 U 585, 168 P 266.

40-2-9. Inspection and reports by industrial commission. It shall be the duty of the industrial commission to make a careful and thorough inspection of each coal and hydrocarbon mine operated within the state at least once every three months, and oftener if the condition of the mine requires its attention. It shall make an annual report to the governor, showing the condition of each coal and hydrocarbon mine in the state. It shall examine into the conditions affecting the safety of workmen, mine workings, machinery, ventilation and drainage, and into the method of lighting and using lights, and all other matters connected with the working safety of persons in such mines, and give directions providing for the better health and safety of persons employed in or about the same. Every owner or operator is hereby required to freely permit such entry, inspection, examination, inquiry and exit, and to furnish a guide when necessary. The industrial commission shall make a record of its visits, noting the time of the inspection and the material circumstances of the same, and shall also notify the owner or operator of the mine by a written report of the condition of the mine at the time of such inspection.

History: R.S. 1898, §§ 1510, 1512, 1513; C.L. 1907, § 1519; C.L. 1917, § 3922 [1]; R.S. 1933 & C. 1943, 55-2-9.

40-2-10. Notice to operators to make safe. If the industrial commission finds that a mine is not properly worked, or is not furnished with proper machinery or appliances for the safety of the miners and all other employees, it shall give written notice to the owner or manager thereof that it is unsafe, specifying in what particulars it is unsafe, and shall direct the owner or manager thereof to make such improvements as are necessary within a reasonable period. If the improvements are not made as required in the notice, it shall be unlawful for the owner or manager to operate such mine until such improvements are completed.

History: R.S. 1898, §§ 1510, 1512, 1513; C.L. 1907, § 1519; C.L. 1917, § 3922 [2]; R.S. 1933 & C. 1943, 55-2-10.

40-2-11. Oil and greases — Underground storage — Containers — Oiling or greasing of cars inside of mines. Underground storage for lubricating oils and greases in excess of two days' supply shall be of fireproof construction. Lubricating oils and greases used in face regions or other working places shall be in portable closed metal containers. The oiling or greasing of cars inside of the mines is forbidden unless the place where the oil or grease is used is thoroughly cleaned at least once every day to prevent the accumulation of waste oil or grease on the roads or in the drains at that point.

History: R.S. 1898, §§ 1510, 1512, 1513; C.L. 1907, § 1519; C.L. 1917, § 3922 [3]; R.S. 1933 & C. 1943, 55-2-11; L. 1949, ch. 64, § 1.

Compiler's Notes.

The 1949 amendment rewrote this section which read: "No explosive oil shall be used in or taken into coal or hydrocarbon mines for lighting purposes, except when used in approved safety lamps, or, when used by day men, diluted with a nonexplosive animal or vegetable oil. Oil for such purpose shall not be stored or taken into the mines in quantities exceeding five gallons, or otherwise than in tight cans approved by the industrial commission. The oiling or greasing of cars inside of the mines is forbidden unless the place where the oil or grease used is thoroughly cleaned at least once every day to prevent the accumulation of waste oil or grease on the roads or in the drains at that point; and not more than one barrel of lubricating oil shall be permitted in a mine at any one time. Only a pure animal oil shall be permitted in a mine at any one time. Only a pure animal oil or pure cottonseed oil, or oils that are as free from smoke as pure animal oil or pure cottonseed oil, shall be used for illuminating purposes in any coal or hydrocarbon mine, except as above provided. No person shall use explosive or impure oil contrary to this section."

40-2-12. Speaking tubes and signaling devices. In shaft or slope mines where persons are lowered or hoisted by machinery a metal speaking tube or other suitable appliance shall be provided in all cases so that conversation or signaling may be carried on through the same from the top to the bottom of the shaft or slope.

History: C.L. 1907, § 1520; C.L. 1917, § 3923; R.S. 1933 & C. 1943, 55-2-12.

40-2-13. Explosions and accidents. Whenever by reason of an explosion or any other accident in any coal or hydrocarbon mine, or the machinery connected therewith, loss of life or serious personal injury occurs it shall be the duty of the person having charge of such mine or colliery to give notice thereof promptly to the industrial commission, and, if any person is killed thereby, to the proper justice of the peace of the county, who shall give due notice of an inquest to be held. If such justice of the peace shall determine to hold an inquest, the commission may offer such evidence as it shall deem necessary to thoroughly inform the inquest of the causes of death, and the commission may appear before such inquest and question or cross-question any witness, and there shall be at least two men experienced in coal mines on the jury. The commission, when possible, upon being notified as herein provided shall immediately go to the scene of the accident and give such directions as may appear necessary to secure the future safety of the men, and shall proceed to investigate and ascertain

the causes of the explosion or accident, and make a record thereof, which it shall file. The cost of such investigation shall be paid by the county in which the accident occurred.

History: R.S. 1898, § 1523; C.L. 1907, § 1521; C.L. 1917, § 3924; R.S. 1933 & C. 1943, 55-2-13.

Cross-References.

Investigation of deaths, 26-4-1 et seq.

Collateral References.

Shaft, liability of landowner for injury or death of adult falling down unhoused mine shaft or the like, 46 ALR 2d 1069.

Strip or other surface mine or quarry operator, liability to person, other than employee, injured or killed during mining operations, 84 ALR 2d 733.

40-2-14. Mine foreman, fireboss and shotfirer — Applicants for — Examining board — Composition of — Certificates of competency — Term of office of examiners — Compensation and expenses of examining board. The industrial commission shall appoint an examining board consisting of six members, two of whom shall be members or employees of the commission, two of whom shall be officials of coal mine operators, and two of whom shall be coal miners, (the latter four must be citizens of the United States, and have had at least five years' experience in coal mining in this state). It shall be the duty of the examining board to examine applicants as to their competency and qualifications to discharge the duties of mine foreman, firebosses and shotfirer. Such board of examiners shall meet at the call of the commission and examine applicants for the positions of mine foreman, fireboss and shotfirer, respectively. The commission shall grant certificates to persons whose examinations disclose their fitness for the duties of mine foreman, fireboss and shotfirer, respectively. A certificate shall be sufficient evidence of the competency and qualifications of the holder to perform the duties of the certified position. The members of the examining board, other than members of the commission or its employees shall receive $25 per day, to be paid from the state treasury, for each day necessarily and actually employed, and actual and necessary traveling expenses while employed in their official duties. Sessions of the examining board shall not exceed three days in any quarter. The members of the examining board shall hold office at the pleasure of the commission.

History: R.S. 1898, § 1526; C.L. 1907, § 1522; C.L. 1917, § 3925; L. 1923, ch. 10, § 1; R.S. 1933 & C. 1943, 55-2-14; L. 1945, ch. 83, § 1; 1973, ch. 74, § 1.

Compiler's Notes.

The 1945 amendment increased the examining board to six members; inserted references to "shotfirer" in the second, third and fourth sentences; increased compensation for board members from $4 per day to $10 per day; and made minor changes in phraseology.

The 1973 amendment increased the per diem for board members from $10 to $25.

40-2-15. Certificate — Fee — Qualifications. For each certificate granted a fee of $3 shall be collected, to be paid into the state treasury. No person shall be granted a certificate as mine foreman, or fireboss or shotfirer who is not a citizen of the United States, unless he shall produce

satisfactory evidence of good moral character and has declared his intention to become a citizen under the naturalization laws. No person shall be granted a certificate as mine foreman who has had less than four years of varied underground coal mining experience, and no person shall be granted a certificate as fireboss or shotfirer who has had less than two years of underground coal mining experience; provided, that a graduate of an approved four year college course in mining engineering shall, by reason of such graduation, be given credit for two years' experience toward the mine foreman's certificate and for one year's experience toward the certificate as fireboss or shotfirer and a graduate of a two-year course in mining technology shall by reason of such graduation be given one year's experience toward the mine foreman certificate and six months experience toward the certificate as fireboss or shotfirer.

History: R.S. 1898, § 1526; C.L. 1907, § 1522; C.L. 1917, § 3925; L. 1923, ch. 10, § 1; R.S. 1933 & C. 1943, 55-2-15; L. 1945, ch. 83, § 1; 1949, ch. 64, § 1; 1973, ch. 74, § 2; 1977, ch. 162, § 1.

Compiler's Notes.

The 1945 amendment inserted "or shotfirer" in the second sentence; and made minor changes in phraseology and punctuation.

The 1949 amendment added the last sentence.

The 1973 amendment changed the experience requirements for foremen from "five years' coal mining experience" to "four years of varied underground coal mining experience," for fireboss or shotfirer from "three years' coal mining experience" to "two years of underground coal mining experience," and for college graduates in mining engineering, substituted credits for two years' experience and one year's experience for "two years' experience toward the required five years of coal mining experience and for one and one-half years' experience toward the required three years of coal mining experience."

The 1977 amendment increased the certificate fee from $1 to $3; substituted "mine foreman's certificate" near the end of the section for "required four years of coal mining experience"; substituted: "certificate as fireboss or shotfirer * * * experience toward the certificate as fireboss or shotfirer" in the proviso to the third sentence for "required two years of underground coal mining experience"; and made a minor change in phraseology.

40-2-16. Necessity of certificate — Temporary mine foreman certificate — Posting — Prohibition and effect as to employment of one not having certificate — Liability of operator for injury or death of miner — Actions — Time limitation. Except as herein provided, no person shall act as mine foreman or as fireboss or as shotfirer unless granted a certificate of competency by the industrial commission; provided, that the industrial commission may issue, upon a showing of competency, a temporary mine foreman certificate to remain in effect until terminated or until the requirements of this chapter have been satisfied and a permanent certificate is issued. No owner, operator, contractor, lessee or agent shall employ any mine foreman or fireboss or shotfirer who does not have the certificate of competency required. Such certificate shall be posted in the office of the mine, and if any accident shall occur in any mine, in which a mine foreman or a fireboss or a shotfirer was employed who had no certificate of competency as required by this chapter, by which any miner shall be killed or injured, he or his heirs shall have a right of action against such operator, owner, lessee, or agent and shall recover the full damage sustained; such

action to be brought within two years after the accident, and, in case of death, to be brought by his heirs, or personal representatives for the benefit of his heirs.

History: R.S. 1898, § 1526; C.L. 1907, § 1522; C.L. 1917, § 3925; L. 1923, ch. 10, § 1; R.S. 1933 & C. 1943, 55-2-16; L. 1945, ch. 83, § 1; 1949, ch. 64, § 1; 1977, ch. 162, § 2.

Compiler's Notes.

The 1945 amendment made minor changes in phraseology.

The 1949 amendment inserted the first sentence; and made minor changes in phraseology.

The 1977 amendment substituted "until terminated or until the requirements of this chapter have been satisfied and a permanent certificate is issued" at the end of the first sentence for "unless sooner revoked for cause, only until the time the next regular examination for certification is held"; and made minor changes in phraseology and punctuation.

40-2-17. Violation of chapter — Penalty. The neglect or refusal to perform the duties required to be performed by any section of this chapter, or the violation of any of the provisions hereof is a misdemeanor, and any person so neglecting or refusing to perform such duties or violating any such provisions, shall be punished by a fine of not less than $100 nor more than $500 for each such offense.

History: R.S. 1898, § 1516; C.L. 1907, § 1524; C.L. 1917, § 3926; R.S. 1933 & C. 1943, 55-2-17.

CHAPTER 3

WEIGHING COAL AT MINES

Section
40-3-1. Operators to provide scales.
40-3-2. Weighmen — Oath — Record of coal mined by individual miners.
40-3-3. Check-weighmen — Duties and powers.
40-3-4. Fraudulent weighing — Penalty.
40-3-5. Industrial commission to examine scales.
40-3-6. Shipments — Bill of lading to show weight of car before and after loading.

40-3-1. Operators to provide scales. The owner, agent or operator of every coal mine at which the miners are paid by weight shall provide at such mine suitable and accurate scales of standard manufacture for the weighing of all coal which shall be hoisted or delivered from such mine. When coal is weighed in the miner's car such car shall be brought to a standstill on the scales before the weight is taken.

History: R.S. 1898 & C.L. 1907, § 1529; C.L. 1917, § 3930; R.S. 1933 & C. 1943, 55-3-1.

Collateral References.

Public control and regulation, 54 AmJur 2d 359, Mines and Minerals § 183.

40-3-2. Weighmen — Oath — Record of coal mined by individual miners. Such owner, agent or operator shall require the person authorized to weigh the coal to take and subscribe an oath to keep the scales correctly

balanced, to accurately weigh and to correctly record the gross or screened weight, to the nearest ten pounds, of each miner's car of coal delivered, and such oath shall be kept conspicuously posted at the place of weighing. The record of the coal mined by each miner shall be kept separate, and shall be opened to his inspection at all reasonable hours, and also to the inspection of all other persons pecuniarily interested in the mine.

History: R.S. 1898 & C.L. 1907, § 1530; C.L. 1917, § 3931; R.S. 1933 & C. 1943, 55-3-2.

40-3-3. Check-weighmen — Duties and powers. In all coal mines the miners employed and working therein may furnish a competent check-weighman at their own expense, who shall at all proper times have full right of access to and examination of such scales or machinery and right of inspection of measuring apparatus, and weights of coal mined and of accounts kept of the same; provided, that not more than one person on behalf of the miners collectively shall have such right of access, examination and inspection of scales, measures and accounts at the same time, and that such person shall cause no unnecessary interference with the use of such scales, machinery or apparatus. Such agent of the miners shall before entering upon his duties take and subscribe an oath that he is duly qualified and will faithfully discharge the duties of check-weighman. Such oath shall be kept conspiciously posted at the place of weighing.

History: R.S. 1898 & C.L. 1907, § 1531; C.L. 1917, § 3932; R.S. 1933 & C. 1943, 55-3-3.

40-3-4. Fraudulent weighing — Penalty. Any person having or using any scales, for the purpose of weighing the output of coal at mines, so arranged or constructed that fraudulent weighing may be done thereby, or who knowingly resorts to or employs any means whatsoever by reason of which such coal is not correctly weighed or reported in accordance with the provisions of this chapter; and any weighman or check-weighman who fraudulently weighs or records the weights of such coal, or connives at or consents to such fraudulent weighing, is guilty of a misdemeanor.

History: R.S. 1898 & C.L. 1907, § 1532; C.L. 1917, § 3933; R.S. 1933 & C. 1943, 55-3-4.

40-3-5. Industrial commission to examine scales. It shall be the duty of the industrial commission to examine all scales used at any coal mine for the purpose of weighing coal taken out of such mine, and on inspection, if found incorrect, it shall notify the owner or agent of such mine that they are incorrect. After such notice it shall be unlawful for any owner or agent to use or suffer the same to be used, until such scales are so adjusted that the same will give correct weight. Any person violating the provisions of this section is guilty of a misdemeanor.

History: R.S. 1898 & C.L. 1907, § 1534; C.L. 1917, § 3934; R.S. 1933 & C. 1943, 55-3-5.

40-3-6. Shipments — Bill of lading to show weight of car before and after loading. It is hereby made the duty of all persons engaged in the mining or shipping of coal from any mine or point within this state to weigh each empty car before it is loaded and to note the weight thereof upon the bill of lading, and to weigh each car after the same is loaded and to note the weight thereof upon the bill of lading or waybill of the same. Any person violating the provisions of this section is guilty of a misdemeanor.

History: L. 1913, ch. 98, § 1; C.L. 1917, § 3935; R.S. 1933 & C. 1943, 55-3-6.

CHAPTER 4

NATURAL GAS

(Repealed by Laws 1955, ch. 65, § 15)

40-4-1 to 40-4-7. Repealed.

Repeal.

Sections 40-4-1 to 40-4-7 (R.S. 1898 & C.L. 1907, §§ 1548 to 1551; L. 1909, ch. 115, §§ 1 to 3; C.L. 1917, §§ 4020 to 4023, 4025 to 4027; R.S. 1933 & C. 1943, 59-0-1 to 59-0-7), relating to natural gas, were repealed by Laws 1955, ch. 65, § 15.

CHAPTER 5

MISCELLANEOUS OFFENSES

Section
40-5-1. Surface hazards from mining — Slack coal afire — Liability.
40-5-2. Fire protection equipment.
40-5-3. Safety cages.
40-5-4. Storage of explosives — License.
40-5-5. Emergency supplies and medicine — First-aid materials.

40-5-1. Surface hazards from mining — Slack coal afire — Liability. The owner, lessee or agent of any mine who by working such mine has caused, or may hereafter cause, the surface of the public domain, or of any highway, or other lands, to cave in and form a pit or sink into which persons or animals are likely to fall shall cause such pit or sink to be filled up, or to be securely enclosed with a substantial fence at least four and one-half feet high; and if he has heaped or piled, or shall hereafter heap or pile, slack coal on the surface, and such slack coal shall take fire and endanger the life or safety of any person or animal, he shall cause the fire to be extinguished or the burning coal to be enclosed with a sufficient fence. Any person violating any of the provisions of this section is guilty of a misdemeanor, and shall be liable for all damages resulting.

History: R.S. 1898 & C.L. 1907, §§ 1539, 1540; C.L. 1917, §§ 3940, 3941; R.S. 1933 & C. 1943, 55-4-1.

Cross-References.

Injuries by underground work, action does not accrue until discovery, 78-12-26.

Collateral References.

Mines and Minerals ⇦ 92.9.

58 CJS Mines and Minerals § 240.

Public control and regulation, 54 AmJur 2d 346 et seq., Mines and Minerals § 167 et seq.

Duty and liability as to plugging oil or gas well abandoned or taken out of production, 50 ALR 3d 240.

Shaft, liability of landowner for injury or death of adult falling down unhoused mine shaft or the like, 46 ALR 2d 1069.

Strip or other surface mine or quarry operator, liability to person, other than employee, injured or killed during mining operations, 84 ALR 2d 733.

40-5-2. Fire protection equipment. All mines having but one exit, when the same is covered with a building containing the mechanical plant, furnace room or blacksmith shop, shall have fire protection. Where steam is used, hose of sufficient length to reach the farthest point of the plant shall be attached to a feed pump or injector, and the same kept ready for immediate use. In mines where water is not available, chemical fire extinguishers or hand grenades shall be kept in convenient places for immediate use. Any person who refuses or neglects to comply with the provisions of this section is guilty of a misdemeanor.

History: L. 1901, ch. 128, § 1; C.L. 1907, § 1540x; C.L. 1917, § 3942; R.S. 1933 & C. 1943, 55-4-2.

40-5-3. Safety cages. It is unlawful for any person to sink any vertical shaft, where mining cages are used, to a greater depth than 200 feet, unless the shaft is provided with an iron-bonneted safety cage to be used in lowering and hoisting employees or other persons. The safety apparatus, whether consisting of eccentrics, springs or other device, must be securely fastened to the cage, and of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. The iron bonnet must be made of boiler sheet iron of good quality, at least three-sixteenths of an inch in thickness, and must cover the top of the cage in such manner as to afford the greatest protection to life and limb from any debris or anything falling down the shaft. Any violation of this section is punishable by a fine of not less than $200 nor more than $500, the same to be paid into the county treasury of the county in which the cause is heard.

History: L. 1901, ch. 129, § 1; C.L. 1907, § 1540x1; C.L. 1917, § 3943; R.S. 1933 & C. 1943, 55-4-3.

Cross-References.

Number of persons to be hoisted or lowered at one time, 40-2-8(6).

Provision for safe egress, 40-2-4.

40-5-4. Storage of explosives — License. It is unlawful for any person employing more than four men at any one time to have stored at any shaft house, or covering over any adit, incline or tunnel connected with a metalliferous mine, any powder or other high explosive whatever; or to have stored within the underground workings, stope or drifts of any such mine at any one time more than enough powder or other high explosive to do the work for each twenty-four hours, without first having obtained written permission from the industrial commission. Any violation of this

section shall be punished by a fine of not less than $100 nor more than $1,000.

History: L. 1903, ch. 12, §§ 1, 2; C.L. 1907, § 1540x2; C.L. 1917, § 3944; L. 1921, ch. 80, § 1; R.S. 1933 & C. 1943, 55-4-4.

Cross-References.

Penal provisions regarding explosives, 76-10-301 et seq.

Storage and use of explosives, 40-2-8 (10) to (15).

Tort liability.

Violation of provisions relating to storage of explosives in mine renders mine owner-operator liable for injuries proximately caused to an invitee by such violation. Skerl v. Willow Creek Coal Co. (1937) 92 U 474, 69 P 2d 502, citing predecessor to 40-2-8.

40-5-5. Emergency supplies and medicine — First-aid materials. At each mine in this state where five or more men are employed it shall be the duty of the operator or owner thereof to keep readily accessible a properly constructed stretcher, a woolen blanket, a waterproof blanket and standard (United States bureau of mines) first-aid materials for the comfort and treatment of anyone injured in such mine. Any willful neglect, refusal or failure to do the things required to be done by this section, or any attempt to obstruct or interfere with the compliance of its provisions, is a misdemeanor.

History: L. 1907, ch. 33, §§ 1, 2; C.L. 1907, §§ 1540x3, 1540x4; C.L. 1917, §§ 3945, 3946; R.S. 1933 & C. 1943, 55-4-5; L. 1945, ch. 83, § 1.

Compiler's Notes.

The 1945 amendment added "and standard (United States bureau of mines) first aid materials for the comfort and treatment of anyone injured in such mine" to the first sentence.

Cross-References.

Hospital and medical services for disabled miners, 35-6-1, 35-6-2.

CHAPTER 6

BOARD AND DIVISION OF OIL, GAS, AND MINING

40-6-1. Declaration of public interest. It is declared to be in the public interest to foster, encourage, and promote the development, production, and utilization of natural resources of oil and gas in the state of Utah in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners be fully protected; to encourage, authorize, and provide for voluntary agreements for cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers, and the general public may realize and enjoy the greatest possible good from these vital natural resources.

History: L. 1955, ch. 65, § 1.

Compiler's Notes.

The powers and duties of the oil and gas conservation commission are transferred to the board of oil, gas, and mining and the division of oil, gas, and mining. See 40-6-3 and 40-6-15.

Title of Act.

An act defining and prohibiting the waste of oil and gas in the state of Utah; designating the Utah state land board as the oil and gas conservation commission; granting certain powers to and defining the duties of the commission with respect to conservation of oil and gas; providing for the enforcement of the act and the rules, regulation and orders of the commission; providing for the filing and hearing of complaints concerning waste of oil and gas, and for oaths, subpoenas, records, suits and appeals; providing that certain agreements shall not be construed to violate statutes relating to trusts, monopolies or contracts and combinations in restraint of trade; providing for judicial review of acts of the commission; providing for the raising of funds to defray the costs of administering the act; repealing sections 1, 2, 3, 4, 5, 6, and 7 of chapter 4, Title 40, Utah Code Annotated 1953; and providing for an effective date. — Laws 1955, ch. 65.

Cross-References.

Interstate Oil and Gas Compact, 40-7-1 to 40-7-3.

Natural Resources Act, 63-34-1 et seq.

Collateral References.

Constitutional Law ⇦ 81; Mines and Minerals ⇦ 92.8.

16 CJS Constitutional Law §§ 174-180, 188; 58 CJS Mines and Minerals §§ 229, 240.

16 AmJur 2d 874, 887, Constitutional Law §§ 335, 345; 16A AmJur 2d 65-72, Constitutional Law §§ 382-385.

Mines, validity of statute restricting the right of mining so as not to interfere with surface, 28 ALR 1330.

Natural resources, constitutionality of statute limiting or controlling exploitation or waste, 24 ALR 834.

Oil or gas, statute or ordinance limiting rights of surface owner in respect of, 67 ALR 1346, 99 ALR 1119.

Petroleum production, constitutionality of statute regulating, 86 ALR 418.

Prohibition or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits, 10 ALR 3d 1226.

Validity of prohibition or regulation of removal or exploitation of oil, minerals, soil, or other natural products within municipal limits, 168 ALR 1888.

Validity, under police power, of compulsory pooling or unitization statute requiring owner or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 ALR 2d 436.

Law Reviews.

An Argument for Enforced Unit Development of Oil and Gas Reservoirs in Utah, 7 Utah L. Rev. 197.

Aneth Spacing Order: A Case Study of Administrative Regulation, 7 Utah L. Rev. 16.

40-6-2. Waste of oil and gas prohibited. The waste of oil and gas or either of them as in this act defined is hereby prohibited.

History: L. 1955, ch. 65, § 2.

Collateral References.

Constitutionality of statute limiting or controlling exploitation or waste of natural resources, 24 ALR 307, 78 ALR 834.

Injury by waste, to property occasioned by oil, water, or the like flowing from well, liability for, 19 ALR 2d 1025.

Statutes regulating production of oil or gas in a manner or under conditions constituting waste, construction, application, and effect of, 86 ALR 431.

40-6-3. Board of oil, gas, and mining created — Transfer of powers — Policy-making for division of oil, gas, and mining — Construction. There is created within the department of natural resources a board of oil, gas, and mining which, except as otherwise provided in this act, shall assume all of the policy-making functions, powers, duties, rights and responsibilities of the oil and gas conservation commission and the board of oil and gas conservation under Title 40 or any other provision of law, together with all functions, powers, duties, rights and responsibilities granted to the board of oil, gas, and mining by this act. The board of oil, gas, and mining shall be the policy-making body of the division of oil, gas, and mining. Except as otherwise provided in this act, whenever reference is made in Title 40, or any other provision of law, to the oil and gas conservation commission or the board of oil and gas conservation, it shall be construed as referring to the board of oil, gas, and mining where such reference pertains to policy-making functions, powers, duties, rights and responsibilities; but in all other instances such reference shall be construed as referring to the division of oil, gas and mining.

History: C. 1953, 40-6-3, enacted by L. 1967, ch. 176, § 35; L. 1975, ch. 130, § 5.

Compiler's Notes.

Laws 1967, ch. 176, § 35 repealed old section 40-6-3 (L. 1955, ch. 65, § 3), relating to creation of oil and gas conservation commission, and enacted new section 40-6-3.

The 1975 amendment substituted references to "board of oil, gas, and mining" and to "division of oil, gas, and mining" for references to "board of oil and gas conservation" and to "division of oil and gas conservation" throughout the section; and made minor changes in phraseology.

Cross-References.

Creation of department of natural resources and boards and divisions within department, 63-34-3.

40-6-3.2. Board of oil, gas, and mining — Members, appointment and terms — Chairman — Per diem allowance and expenses — Hearing examiner. (1) Upon the effective date of this act the terms of office

of all the present members of the board of oil, gas, and mining shall expire. The board of oil, gas, and mining comprised of seven members shall then be appointed by the governor, with the advice and consent of the senate. Not more than four members shall be from the same political party. One member of the board shall be appointed from each of the following districts:

District 1: Wayne, Emery, Grand, San Juan, and Carbon Counties;

District 2: Uintah, Daggett, Duchesne, Wasatch, and Summit Counties;

District 3: Box Elder, Weber, Rich, Morgan, Davis, and Cache Counties;

District 4: Salt Lake County;

District 5: Tooele, Utah, and Juab Counties;

District 6: Sanpete, Millard, Beaver, Sevier, Piute, Garfield, Iron, Washington, and Kane Counties.

One member shall be appointed from the state at large.

(2) In order to provide for a multi-interest board, the members shall be appointed with the following qualifications: two members knowledgeable in mining matters; two members knowledgeable in oil and gas matters; two members knowledgeable in ecological and environmental matters; and one member who is a member of the Utah State Bar, but if one of the other members is an attorney, then a member knowledgeable in local or tribal government may be appointed to fill this membership.

(3) The terms of office of four of the members first appointed shall expire March 1, 1981, and the terms of office of the remaining three members shall expire on March 1, 1983. Their successors shall each be appointed for terms of four years each. Vacancies occurring by reason of death, resignation, or other cause shall be filled by the appointment of another person by the governor, with the advice and consent of the senate, for the unexpired term of the person whose office was vacated and shall be from the same district and have the same qualifications as his or her predecessor.

(4) The board shall appoint its chairman from its membership, four members of the board shall constitute a quorum for the transaction of business and for the holding of hearings, and each member of the board shall receive a per diem allowance as established by the board of examiners and all actual and necessary expenses incurred in carrying out his official duties.

(5) The board may appoint a hearing examiner for the purpose of taking evidence and recommending findings of fact and conclusions of law for ultimate disposition by the board.

History: C. 1953, 40-6-3.2, enacted by L. 1978 (2nd S.S.), ch. 5, § 1.

Compiler's Notes.

Laws 1978 (2nd S.S.), ch. 5, § 1 repealed old section 40-6-3.2 (L. 1967, ch. 176, § 36), relating to the board of oil and gas conservation, and enacted new section 40-6-3.2.

Title of Act.

An act repealing and re-enacting section 40-6-3.2, Utah Code Annotated 1953, as enacted by chapter 176, Laws of Utah 1967; relating to the board of oil, gas, and mining; ending the terms of office of the present board and reconstituting it; providing for appointment of new members to the board and for their qualifications, terms of office,

and compensation; providing for organization of the board and for certain of its powers, functions, and duties; and providing an effective date. — Laws 1978 (2nd S.S.), ch. 5.

Effective Date.

Section 2 of Laws 1978 (2nd S.S.), ch. 5 provided that the act should take effect upon approval. Approved June 2, 1978.

40-6-3.3. Board of oil and gas conservation — Power and authority — Legal adviser. (1) The board shall have and is hereby given jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this act and shall have the power and authority to make and enforce rules, regulations and orders and do whatever may reasonably be necessary to carry out the provisions of this act. Any delegation of authority to any other state officer, board or commission to administer any or all other laws of this state relating to the conservation of oil or gas, or either of them, is hereby rescinded and withdrawn and such authority is hereby unqualifiedly conferred upon the board, as herein provided. Any person, or the attorney general, on behalf of the state, may apply for a hearing before the board, or the board may initiate proceedings upon any question relating to the administration of this act, and jurisdiction is hereby conferred upon the board to hear and determine the same and enter its rule, regulation or order with respect thereto.

(2) The board may sue and be sued in its administration of this act in any state or federal district court in the state of Utah having jurisdiction of the parties or of the subject matter.

(3) The attorney general shall act as the legal adviser of the board and represent the board in all court proceedings and in all proceedings before it and in any proceedings to which the board may be a party before any department of the federal government.

(4) The board shall have and is hereby given jurisdiction and authority over the development and production of crude petroleum oil and gas, and crude shale oil, regardless of gravities, from bituminous sandstone and/or oil shale deposits in any manner or form.

History: C. 1953, 40-6-3.3, enacted by L. 1967, ch. 176, § 37; L. 1969, ch. 92, § 1.

Compiler's Notes.

The 1969 amendment added subsec. (4).

40-6-4. Definitions. (a) The word "commission" shall mean the oil and gas conservation commission.

(b) The word "oil" shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

(c) The word "gas" shall mean all natural gases and all liquid hydrocarbons not defined herein as oil.

(d) The word "person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent or other representative of any kind and includes any department, agency or instrumentality of the state or any governmental subdivision thereof.

(e) The word "owner" shall mean the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, including the owner of a well or wells capable of producing oil or gas, or both.

(f) The word "producer" shall mean the owner of a well or wells capable of producing oil or gas, or both.

(g) The word "pool" shall mean an underground reservoir containing a common accumulation of oil or gas, or both. Each zone of a general structure, which zone is completely separated from any other zone in the structure, is covered by the word "pool" as used herein.

(h) The term "common source of supply" is synonymous with "pool" as defined herein.

(i) The term "drilling unit" means the maximum area that may be drained efficiently and economically by one well.

(j) The term "correlative rights" means the owners' or producers' just and equitable share in a pool.

(k) The term "waste" as applied to oil shall include underground waste, inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive, surface waste, open-pit storage and waste incident to the production of oil in excess of the producer's above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up or maintaining crude stocks and products thereof for consumption, use and sale.

(l) The term "waste" as applied to gas shall include the escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing and testing of wells and in furnishing power for the production of wells.

History: L. 1955, ch. 65, § 4.

Compiler's Notes.

See Compiler's Notes to 40-6-1.

Cross-References.

Words and phrases defined by statute, construction of, 68-3-11.

40-6-5. Board of oil and gas conservation — Additional powers. The board of oil and gas conservation shall also have the authority to require:

(a) Identification of ownership of oil or gas wells and producing leases;

(b) The making and filing with the board of true and correct copies of well logs; provided, however, that logs of wells marked confidential shall be kept confidential for four months after the date on which the log is required to be filed by the board, unless the operator gives written permission to release such logs at an earlier date. And provided further, that

upon application, after four months from the effective date of this act, by an owner or other person having a royalty or leasehold right, the board shall require the owner of a well theretofore drilled for oil and gas to file within four months of such order a true and correct copy of the log of such well;

(c) The drilling, casing, producing, and plugging of wells and the use of said wells for injection purposes in such a manner as to prevent (1) the escape of oil or gas from one stratum into another, (2) the intrusion of water into oil or gas stratum, (3) the pollution of fresh water supplies by oil, gas or salt water, or brackish [water], the contamination of any useful natural resources by injected fluids, and (4) blowouts, cavings, seepage, explosions and fires; provided, the board shall have exclusive authority and jurisdiction with respect to the underground storage of oil and gas, including liquefied petroleum gases, and the injection of water into or the use, withdrawal from, or forming the cushion or drive for any underground natural or storage oil or gas reservoir, including the drilling of any well for any purpose to any such reservoir or to any stratum above or below any such reservoir, and any delegation of authority to any other state officer, board or commission with respect to such water or drilling is hereby rescinded and revoked;

(d) The furnishing of reasonable security conditioned upon the performance of the duty to plug each dry or abandoned well;

(e) That the production of wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by such standards as may be prescribed by the board;

(f) That every person who produces oil or gas in the state keep and maintain for a period of five years complete and accurate records of the quantities thereof, which records, or certified copies thereof, shall be available for examination by the board or its agents at all reasonable times within said period and that every such person file with the board such reasonable reports as it may prescribe with respect to such oil or gas production;

(g) That a notice of intention to drill be filed with the board before any well for oil or gas is commenced;

(h) Safety measures to prevent fires and blowouts.

History: L. 1955, ch. 65, § 5; 1963, ch. 64, § 1; 1969, ch. 93, § 1.

Compiler's Notes.

The 1963 amendment deleted "exploratory or wildcat" before "wells marked confidential" in the first sentence of subd. (b); and substituted "after the date on which the log is required to be filed by the commission" for "after the filing thereof."

The 1969 amendment substituted references to the board of oil and gas conservation for references to the commission throughout the section; inserted "producing" in subd. (c); inserted "and the use of said wells for injection purposes" in subd. (c); inserted "the contamination of any useful natural resources by injected fluids" in subd. (c)(3); added the proviso to subd. (c)(4); and made minor changes in phraseology and style.

The bracketed word "water" in subd. (c)(3) was inserted by the compiler.

40-6-6. Drilling units — Establishment — Pooling of interest — Voluntary or upon application — Pooling order. (a) To prevent waste of oil or gas, to avoid the drilling of unnecessary wells, or to protect correlative rights, the board of oil, gas, and mining, upon its own notice or upon application of any interested persons, after notice and hearing as herein provided, shall have the power to establish drilling units covering any pool. Drilling units when established shall be of uniform size and shape for the entire pool, except that, when found to be necessary for any of the purposes above mentioned, the board is authorized to divide any pool into zones and establish drilling units for each zone, which units may differ in size and shape from those established in any other zone, subject to the limitations of subsection (b) herein.

(b) In establishing a drilling unit, the acreage to be embraced within each unit and the shape thereof shall be determined by the board from the evidence introduced at the hearing but shall not be smaller nor greater than the maximum area that can be efficiently and economically drained by one well.

(c) Subject to the provisions of this act, the order establishing drilling units shall direct that no more than one well shall be drilled for production from the common source of supply on any unit, and that the well shall be drilled at a location authorized by the order, with such exception as may be reasonably necessary where it is shown upon application, notice and hearing, and the board finds, that the drilling unit is located on the edge of a pool or field and adjacent to a producing unit, or, for some other reason, the requirement to drill the well at the authorized location on the unit would be inequitable or unreasonable.

(d) An order establishing drilling units for a pool shall cover all lands determined by the board to be underlaid by such pool, and may be modified by the board from time to time to include additional areas determined to be underlaid by such pool. When found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing drilling units in a pool may be modified by the board to increase the size of drilling units in the pool or any zone thereof, to decrease the size of drilling units or to permit the drilling of additional wells on a reasonably uniform plan in the pool, or any zone thereof.

(e) After an order fixing drilling units has been entered by the board, the commencement of drilling of any well or wells into any common source of supply for the purpose of producing oil or gas therefrom, at a location other than authorized by the order, is hereby prohibited. The operation of any well drilled in violation of an order fixing drilling units is prohibited.

(f) When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning such interests may pool their interests for the development and operation of the drilling unit. In the

absence of voluntary pooling, the board, upon the application of any persons with an interest in the proposed pooling, may enter an order pooling all interests in the drilling unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing and shall be upon terms and conditions that are just and reasonable. Operations incident to the drilling of a well upon any portion of a unit covered by a pooling order shall be deemed for all purposes to be the conduct of such operations upon each separately owned tract in the unit by the several owners thereof. That portion of the production allocated or applicable to each tract included in a unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from each such tract by a well drilled thereon.

(g) Each pooling order shall make provision for the drilling and operation of a well on the drilling unit, if not already drilled, and for its operation, and for the payment of the costs of same, including a reasonable charge for supervision and storage facilities, as provided in this subsection (g). As to each owner who refuses to agree to bear his proportionate share of the costs of the drilling and operation of the well (the nonconsenting owner), the order shall provide for reimbursement to the party or parties paying for the drilling and operation of the well (consenting owners) for the benefit of all for the nonconsenting owner's share of the costs out of, and only out of, production from the unit representing his interest, excluding royalty or other interest not obligated to pay any part of the cost thereof. The board is authorized to provide that the consenting owners shall own and be entitled to receive all production from the well, after payment of royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable out of production, until the consenting owners have been paid the amount due under the terms of the pooling order or order settling any dispute. In the event of any dispute as to such costs, the board shall determine the proper costs. The order shall determine the interest of each owner in the unit, and shall provide in substance that, each consenting owner shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to his interest in the unit, and, unless he has agreed otherwise, his proportionate part of the nonconsenting owner's share of such production until costs are recovered as provided in this subsection (g); and that each nonconsenting owner shall be entitled to receive, subject to royalty or similar obligations, the share of production from the well applicable to his interest in the unit after the consenting owners have recovered from the nonconsenting owner's share of production the following:

(1) In respect to every such well 100% of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections (including, but not limited to, stock tanks, separators, treaters, pumping equipment, and piping), plus 100% of the nonconsenting owner's share of the cost of operation of the well commencing with first production and continuing until the consenting owners have recovered these costs, it being

intended that the nonconsenting owner's share of these costs and equipment will be that interest which would have been chargeable to the nonconsenting owner had he initially agreed to pay his share of the costs of the well from the beginning of the operation; and

(2) As to a well which is within a proven field as determined by the board 120%, and as to a well which is drilled to a different common source of supply or in an area not proven for production 150%, of that portion of the costs and expenses of staking the location, wellsite preparation, rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing, after deducting any cash contributions received by the consenting owners, and also either 120% or 150%, whichever is appropriate under this subsection (g) (2), of that portion of the cost of equipment in the well (to and including the wellhead connections).

(h) The operator of a well under a pooling order in which there are nonconsenting owners shall furnish the nonconsenting owners with monthly statements of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of this production during the preceding month. If and when the consenting owners recover from a nonconsenting owner's relinquished interest the amounts provided for in subsection (g) of this section, the relinquished interest of the nonconsenting owner shall automatically revert to him; and the nonconsenting owner shall own the same interest in the well and the production from it, and be liable for the further costs of the operation as if he had participated in the initial drilling and operation; but a nonconsenting owner of a tract in a drilling unit, which is not subject to any lease or other contract for the development thereof for oil and gas, shall be deemed to have a basic landowners' royalty of ⅛, or 12 ½%, of the production allocated to such tract.

(i) No rule, regulation or order of the board shall be such in terms or effect that it shall be necessary at any time for the producer from, or the owner of, a drilling unit, in order that he may obtain such unit's just and equitable share of the production of such pool, to drill and operate any well or wells on such unit in addition to such well or wells as can, without waste, produce such share.

History: L. 1955, ch. 65, § 6; 1966 (2nd S.S.), ch. 8, § 1; 1977, ch. 161, § 1.

Compiler's Notes.

The 1966 (2nd S.S.) amendment deleted "provided that no drilling unit, other than a voluntary drilling unit, shall exceed in area 160 acres for oil and 640 acres for gas" at the end of subsec. (b); and made minor changes in phraseology and punctuation.

The 1977 amendment substituted references to the board of oil, gas, and mining throughout the section for references to the oil and gas conservation commission; deleted "and that afford to the owner of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and equitable share" at the end of the third sentence of subsec. (f); rewrote subsec. (g); inserted subsec. (h); redesignated former subsec. (h) as subsec. (i); and made minor changes in phraseology, punctuation and style.

Effective Date.

Section 2 of Laws 1966 (2nd S.S.), ch. 8 provided that the act should take effect upon approval. Approved June 2, 1966.

Collateral References.

Validity, under police power, of compulsory pooling or unitization statute requiring owner or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 ALR 2d 436.

40-6-7. Agreements for repressuring or pressure maintenance operations — Agreements for development and operation of a pool or field. (a) An agreement for repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or for carrying on any other methods of unit or co-operative development or operation of a field or pool or a part of either, is authorized and may be performed, and shall not be held or construed to violate any statutes relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the commission as being in the public interest for conservation or is reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas; provided, such agreement protects the correlative rights of each owner or producer. Such agreement shall bind only the persons who execute them, and their successors in interest.

(b) Whenever the producers have agreed, or the producer in such field where there is only one producer, has adopted a plan for the development and operation of a pool or field, such plan shall be presented to the commission, and if the same, in the judgement of the commission, after a hearing, upon notice, has the effect of preventing waste as defined and prohibited by this act, then such plan shall be adopted and approved by the commission.

History: L. 1955, ch. 65, § 7.

Compiler's Notes.

See Compiler's Notes to 40-6-1.

40-6-8. Rules and regulations governing practice and procedure before commission — Notice — Emergency orders — Records of rules, regulations, and orders — Hearings. (a) The commission shall prescribe rules and regulations governing the practice and procedure before it.

(b) No rule, regulation, or order or amendment thereof, shall be made by the commission without a hearing upon at least ten (10) days' public notice except as hereinafter provided. The hearing shall be held at such time and place as may be prescribed by the commission and any interested person shall be entitled to be heard.

(c) When an emergency requiring immediate action is found by the commission to exist, it is authorized to issue an emergency order without notice or hearing, which shall be effective upon promulgation, provided that no such order shall remain effective for more than fifteen (15) days.

(d) Any notice required by this act except as hereinafter provided shall be given at the election of the commission either by personal service or by one publication in a daily newspaper of general circulation in the city

of Salt Lake and county of Salt Lake, Utah, and in all newspapers of general circulation published in the county where the land is affected, or some part thereof, is situated. The notice shall issue in the name of the state, shall be signed by the commission or the secretary of the commission and shall specify the style and number of the proceeding, the time and place of the hearing, and shall briefly state the purpose of the proceeding. Should the commission elect to give notice by personal service, such service may be made in the same manner and extent as is provided in the Rules of Civil Procedure for the service of summons in civil actions. Proof of service shall be in the form required in the Rules of Civil Procedure with respect to service of summons in civil actions. In all cases where (1) there is an application for the entry of a pooling order of [or] (2) there is an application for an exception from an established well spacing pattern or (3) a complaint is made by the commission or any party that any provision of this act, or any rule, regulation or order of the commission is being violated, notice of the hearing to be held on such application or complaint shall be served on the interested parties in the same manner as is provided in the Rules of Civil Procedure for the service of summons in civil actions.

(e) All rules, regulations and orders issued by the commission shall be in writing, shall be entered in full in books to be kept by the commission for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing Rules of Practice and Procedure, all orders made and published by the commission shall include or be based upon written findings of fact, which said findings of fact shall be entered and indexed as public records in the manner hereinafter provided. A copy of any rule, regulation, finding of fact or order, certified by the commission or by its secretary, shall be received in evidence in all courts of this state with the same effect as the original.

(f) The commission may act upon its own motion, or upon the petition of any interested person. On the filing of a petition for a hearing concerning any matter within the jurisdiction of the commission, it shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The commission shall enter its order within thirty (30) days after the hearing. Any person affected by an order of the commission shall have the right at any time to apply to the commission to repeal, amend, modify, or supplement the same.

History: L. 1955, ch. 65, § 8. See Compiler's Notes to 40-6-1.

Compiler's Notes.

The bracketed word "or" was inserted by the compiler.

40-6-9. Power to summon witnesses, administer oaths, and require production of records — Failure to comply — Contempt proceedings

— **Injunctive relief — Damages.** (a) The commission shall have the power to summon witnesses, to administer oaths, and to require the production of records, books and documents for examination at any hearing or investigation conducted by it.

(b) In case of failure or refusal on the part of any person to comply with a subpoena issued by the commission, or in case of refusal of any witness to testify as to any matter regarding which he may be interrogated, any district court in the state, upon the application of the commission, may in term time or vacation issue an attachment for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

(c) Whenever it shall appear that any person is violating or threatening to violate any provision of this act or any rule, regulation, or order made hereunder, the commission shall bring suit in the name of the state against such person in the district court in the county of the residence of the defendant, or in the county of the residence of any defendant, if there be more than one defendant, or in the county where the violation is alleged to have occurred to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit, the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions.

(d) Nothing in this act, and no suit by or against the commission, and no violation charged or asserted against any person under any provisions of this act, or any rule, regulation or order issued hereunder, shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any provision of this act, or any rule, regulation, or order issued thereunder. Any person so damaged by the violation may sue for and recover such damages as he otherwise may be entitled to receive. In the event the commission shall fail to bring suit to enjoin any actual or threatened violation of this act, or of any rule, regulation or order made hereunder, then any person or party in interest adversely affected and who has, ten days or more prior thereto, notified the commission in writing of such violation or threat thereof and has requested the commission to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the commission shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the complaining party.

History: L. 1955, ch. 65, § 9.

Compiler's Notes.

See Compiler's Notes to 40-6-1.

40-6-10. Actions to test validity of act, rule, regulation, or order — False entries in reports — Penalty — Time limitation for bringing any action for violations. (a) Any person adversely affected by any rule, regulation or order made or issued under this act, may within ninety (90) days after the entry thereof bring a civil suit or action against the commission in the district court of Salt Lake County, or in the district court of the county in which the complaining person resides, or in the United States district court for Utah, (if it otherwise has jurisdiction) and not elsewhere, to test the validity of any provision of this act, or rule, regulation, or order, or to secure an injunction or to obtain other appropriate relief, including all rights of appeal.

(b) An action or appeal involving any provision of this act, or a rule, regulation, or order shall be determined as expeditiously as feasible. The trial court shall determine the issues on both questions of law and fact and shall affirm or set aside such rule, regulation or order or remand the cause to the commission for further proceedings. Such court is hereby authorized to enjoin permanently the enforcement by the commission of this act, or any part thereof, or any act done or threatened thereunder, if the plaintiff shall show that as to him the act or conduct complained of is unreasonable, unjust, arbitrary or capricious, or violates any constitutional right of the plaintiff, or if the plaintiff shows that the act complained of does not constitute or result in waste, or does not in a reasonable manner accomplish an end that is the subject matter of this act.

(c) Any person who, for the purpose of evading this act or any rule, regulation, or order of the commission shall make or cause to be made any false entry in any report, record, account, or memorandum required by this act, or by any such rule, regulation, or order, or shall omit, or cause to be omitted, from any such report, record, account, or memorandum, full, true, and correct entries as required by this act, or by any such rule, regulation, or order, or shall remove from this state or destroy, mutilate, alter, or falsify any such record, account, or memorandum, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than five thousand dollars ($5,000.00) or imprisonment for a term not exceeding six (6) months, or to both such fine and imprisonment.

(d) No suit, action or other proceeding based upon a violation of this act or any rule, regulation or order of the commission hereunder shall be commenced or maintained unless same shall have been commenced within one (1) year from date of the alleged violation.

History: L. 1955, ch. 65, § 10.

Compiler's Notes.

See Compiler's Notes to 40-6-1.

40-6-11. Lands to which act is applicable. This act shall apply to all lands in the state of Utah lawfully subject to its police power, and shall

apply to lands of the United States or to lands subject to the jurisdiction of the United States over which the state of Utah has police power except to the degree that it is inharmonious with the uses, activities or regulations of the United States, and furthermore, the same shall apply to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative except that the commission may, with respect to such unit agreement, suspend the application of this act or any part of this act so long as the conservation of oil and gas and the prevention of waste as in this act provided is accomplished under such unit agreements but such suspension shall not relieve any operator from making such reports as may be required by the commission with respect to operations under any such unit agreement.

History: L. 1955, ch. 65, § 11; 1963, ch. 65, § 1.

Compiler's Notes.

The 1963 amendment rewrote the provisions relating to the application of the act to United States lands or lands subject to the jurisdiction of the United States.

See Compiler's Notes to 40-6-1.

40-6-12. Act not to be construed to authorize restrictions on production to an amount less than well or pool can produce without waste. This act shall never be construed to require, permit or authorize the commission or any court to make, enter or enforce any order, rule, regulation or judgment requiring restriction of production of any pool or of any well, (except a well or wells drilled in violation of section 40-6-6 hereof) to an amount less than the well or pool can produce without waste in accordance with sound engineering practices.

History: L. 1955, ch. 65, § 12.

Separability Clause.

Section 13 of Laws 1955, ch. 65 provided: "If any section, subsection, sentence, clause, phrase or word of this act is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portion of this act. The legislature hereby declares that it would have passed this act and each division, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words might be adjudged to be unconstitutional or for any other reason invalid."

40-6-13. Short title. This act may be cited as the Oil and Gas Conservation Act.

History: L. 1955, ch. 65, § 14.

Repealing Clause.

Section 15 of Laws 1955, ch. 65 provided: "Sections 1, 2, 3, 4, 5, 6, and 7 of Chapter 4, Title 40, Utah Code Annotated 1953, are repealed."

40-6-14. Tax on oil and gas at the well — Disposition — Budget of division of oil and gas conservation — Delinquent payments of well tax — Exemptions. For the purpose of paying the expenses of administration of this act, there is hereby levied and assessed on the market value at the well of all oil and gas produced and saved, sold or transported from

the premises in Utah where produced a charge not to exceed two mills on the dollar value. The board of oil and gas conservation shall by order fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof; provided, that the charge fixed by the board shall not exceed the limit hereinabove prescribed. It shall be the duty of the division of oil and gas conservation to provide for the collection of such assessments. All moneys so collected shall be remitted to the state treasurer for deposit in the state's general fund.

The division of oil and gas conservation shall prepare and submit to the governor, to be included in his budget to the legislature, a budget of the requirements for administrative expenses in carrying out the provisions of law for the fiscal year next following the convening of the legislature.

The persons owning an interest (working interest, royalty interest, payments out of production, or any other interest) in the oil and gas, or in the proceeds thereof, subject to the charge hereinabove provided for shall be liable for such charge in proportion to their ownership at the time of production. The charge so assessed and fixed shall be payable monthly and the sum so due shall be remitted to the division on or before the thirtieth of the month next following the month in which the charge accrued, by the producer on behalf of himself and all other interested persons. Any such charge not paid within the time herein specified shall carry a penalty of five per cent and shall bear interest at the rate of one per cent per month from the date of delinquency until paid, and such charge together with the interest shall be a lien upon the oil or gas against which the same is levied and assessed. The person remitting the charge as herein provided is hereby authorized, empowered and required to deduct from any amounts due the persons owning an interest in the oil and gas or in the proceeds thereof at the time of production a proportionate amount of such charge before making payment to such persons.

This section shall apply to all lands in the state of Utah, anything in section 40-6-11 to the contrary notwithstanding; provided, however, that there shall be exempted from the charge hereinabove levied and assessed the following:

(1) The interest of the United States of America and the interest of the state of Utah and the political subdivisions thereof in any oil or gas or in the proceeds thereof.

(2) The interest of any Indian or Indian tribe in any oil or gas or in the proceeds thereof produced from land subject to the supervision of the United States.

(3) Oil or gas used in producing or drilling operations or for repressuring or recycling purposes.

History: L. 1955, ch. 65, § 16; 1961, ch. 78, § 1; 1967, ch. 78, § 1; 1969, ch. 94, § 1.

Compiler's Notes.

The 1961 amendment substituted "charge not to exceed two mills" for "charge of two mills" in the first sentence; inserted the second sentence in the first paragraph; and

inserted "or drilling" in subd. (3) of the last paragraph.

The 1967 amendment substituted provisions for deposit of moneys in the general fund for provisions relating to deposits of moneys in the oil and gas conservation fund and the use of and expenditures from the fund; and inserted the second paragraph.

The 1969 amendment substituted references to the board and division of oil and gas conservation for references to the commission throughout the section; substituted "fiscal year" in the second paragraph for "biennium"; deleted a clause from the second paragraph which limited expenditures of the commission; and made minor changes in phraseology and punctuation.

Section 2 of Laws 1967, ch. 78 provided: "The unexpended balance in said oil and gas conservation fund as of July 1, 1967, shall be transferred to the unappropriated surplus account of the general fund."

Effective Dates.

Section 17 of Laws 1955, ch. 65 provided: "This act should take effect on July 1, 1955."

Section 3 of Laws 1967, ch. 78 provided: "This act shall take effect on July 1, 1967."

Section 2 of Laws 1969, ch. 94 provided: "This act shall take effect on July 1, 1969."

40-6-15. Division of oil, gas, and mining created — Transfer of powers. There is created the division of oil, gas, and mining which shall be within the department of natural resources under the administration and general supervision of the executive director of natural resources and under the policy direction of the board of oil, gas, and mining. The division of oil, gas, and mining shall be the oil, gas, and mining regulatory body for the state of Utah, shall assume all of the functions, powers, duties, rights and responsibilities of the oil and gas conservation commission and the division of oil and gas conservation of the state of Utah except those which are delegated to the board by this act, and is vested with such other functions, powers, duties, rights, and responsibilities as provided in this act and other law.

History: L. 1967, ch. 176, § 38; 1969, ch. 198, § 27; 1975, ch. 130, § 12.

Compiler's Notes.

The 1969 amendment substituted "executive director" for "co-ordinating council"; and substituted "delegated to the board by this act" for "assumed by the board under this act."

The 1975 amendment substituted references to "division of oil, gas, and mining" and to "board of oil, gas, and mining" for references to "division of oil and gas conservation" and to "board of oil and gas conservation" throughout the section; substituted "oil, gas, and mining regulatory body" for "oil and gas conservation authority" in the second sentence; and made minor changes in phraseology.

Cross-References.

Creation of department of natural resources and boards and divisions within department, 63-34-3.

40-6-16. Director of division of oil, gas, and mining — Appointment — Qualifications. The director of the division of oil, gas, and mining shall be appointed by the board of oil, gas, and mining with the concurrence of the executive director of natural resources. The director shall be the executive and administrative head of the division of oil, gas, and mining and shall be a person experienced in administration and knowledgeable in the extraction of oil, gas, and minerals.

History: L. 1967, ch. 176, § 39; 1969, ch. 198, § 28; 1975, ch. 130, § 13.

Compiler's Notes.

The 1969 amendment substituted "concurrence of the executive director of natural resources" for "prior approval of the

co-ordinating council of natural resources and with the advice and consent of the governor and of the senate"; and deleted a sentence which read: "The director shall serve at the will of the board of oil and gas conservation."

The 1975 amendment substituted references to "division of oil, gas, and mining" and to "board of oil, gas, and mining" for references to "division of oil and gas conservation" and to "board of oil and gas conservation"; and substituted "knowledgeable in the extraction of oil, gas, and minerals" for "knowledgeable in the conservation of oil and gas" at the end of the section.

Cross-References.

Division directors, appointment, removal, compensation, 63-34-6.

40-6-17. Unitization of oil and gas fields — Hearing — Plan — Approval — Amendment of order — Previously established units — Portions of pools — Allocation of production — Individual obligations — Separate contracts — Title not transferred — Unitizations within drilling unit. (1) The division upon its own motion may, and upon the application of any interested person shall, hold a hearing to consider the need for the operation as a unit of one or more pools or parts of them in a field.

(2) The division shall make an order providing for the unit operation of a pool or part of it, if the division finds that:

(a) Such operation is reasonably necessary to prevent waste or to protect correlative rights or to prevent the drilling of unnecessary wells.

(b) The value of the estimated additional recovery of oil or gas substantially exceeds the estimated additional cost incident to conducting such operations.

(3) The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(a) A description of the pool or pools or parts of them to be so operated, termed the unit area.

(b) A statement of the nature of the operations contemplated.

(c) An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the division shall determine the relative value, from evidence introduced at the hearing of the separately owned tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area.

(d) A provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for any such item shall be determined by the owners of the unit area (not including royalty owners); but if said owners of the unit area

are unable to agree upon the amount of such charges, or to agree upon the correctness of same, the division shall determine them after due notice and hearing thereon, upon the application of any interested party. The net amount charged against the owner of a separately owned tract shall be considered expense of unit operation chargeable against such tract. The adjustments provided for herein may be treated separately and handled by agreements separate from the unitization agreement.

(e) A provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how these costs shall be paid, including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay the share of the cost of unit operations charged to such owner, or the interest of such owner, may be sold and the proceeds applied to the payment of such costs. The operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of the cost of developing and operating the unit area. This lien may be established and enforced in the same manner as provided by sections 38-1-8 to 38-1-26 inclusive. For such purposes any nonconsenting owner shall be deemed to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area. A transfer or conversion of any owner's interest or any portion of it, however accomplished, after the effective date of the order creating the unit, shall not relieve the transferred interest of the operator's lien on said interest for the cost and expense of unit operations.

(f) A provision, if necessary, for carrying or otherwise financing any person who elects to be carried or otherwise financed, allowing a reasonable interest charge for such service payable out of such person's share of the production.

(g) A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of such person.

(h) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate.

(i) Such additional provisions that are found to be appropriate for carrying on the unit operations, and for the protection of correlative rights.

(4) No order of the division providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the division has been approved in writing by those persons who, under the division's order, will be required to pay 80% of the costs of the unit operation, and also by the owners of 80% of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties,

overriding royalties, and production payments, and the division has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the division shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the persons owning required percentage of interest in that unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall be ineffective and shall be revoked by the division unless for good cause shown the division extends this time. The division's order shall constitute a complete defense to any suit charging violation of any statute of this state relating to trust, monopolies and combinations in restraint of trade on account of such operations conducted pursuant thereto.

(5) An order providing for unit operations may be amended by an order made by the division in the same manner and subject to the same conditions as an original order providing for unit operations, provided:

(a) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payments and other such interests which are free of costs shall not be required.

(b) No such order of amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning oil and gas rights in such tract, or change the percentage for allocation of cost as established for any separately owned tract by the original order, except with the consent of all owners in such tract.

(6) The division, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace a unit area established by a previous order of the division. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions of those specified in the previous order.

(7) An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose, and the conduct thereof will have no adverse effect upon other portions of the pool.

(8) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners thereof. The portions of the unit production allocated to a separately owned tract in a unit

area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the division providing for unit operations shall constitute a fulfillment of all the express or implied obligations for each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the division.

(9) The portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

(10) No division-order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

(11) Except to the extent that the parties affected so agree and as provided in (e) of subsection (3) of this section, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area and shall be the property of such owners in the proportion that the expenses of unit operations are charged.

(12) This section shall apply only to field or pool units and shall not apply to the unitization of interests within a drilling unit as may be authorized and governed under the provisions of section 40-6-6.

History: C. 1953, 40-6-17, enacted by L. 1969, ch. 95, § 1.

Title of Act.

An act enacting section 40-6-17, Utah Code Annotated 1953, relating to the unitization of oil and gas fields; granting the division of oil and gas conservation authority to require unitization where eighty per cent of the owners or operators of one or more pool or parts of them desire unitization. — Laws 1969, ch. 95.

Separability Clause.

Section 2 of Laws 1969, ch. 95 provided: "If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby."

40-6-18. Royalty payment not made — Hearing by board. (1) The owner of a royalty, overriding royalty, production payment, leasehold interest, operating rights, working interest, or any other interest entitled to share in the proceeds from the sale of production from a well or mine who has not received these proceeds on a regular basis may file a petition with the board of oil, gas, and mining to conduct a hearing to determine why these proceeds have not been paid.

(2) Upon receipt of the petition the board shall notify the party from whom the proceeds are demanded and set a hearing within 30 days.

(3) If, after a hearing, the board finds the payment of proceeds delay is without reasonable justification, it may order a complete accounting and require the proceeds to be paid into an interest bearing escrow account and set a date for final distribution.

History: C. 1953, 40-6-18, enacted by L. 1975, ch. 129, § 1; L. 1979, ch. 146, § 1.

Compiler's Notes.

The 1979 amendment rewrote subsec. (1) which read: "Any royalty, overriding royalty, or working interest owner who has not received his share of the proceeds from the sale of production from a well in which he has an interest may file a petition with the board of oil and gas conservation to conduct a hearing to determine why the proceeds have not been paid"; substituted references to proceeds for references to royalty or interest in subsecs. (2) and (3); and made minor changes in style.

Title of Act.

An act enacting sections 40-6-18 and 40-6-19, Utah Code Annotated 1953; relating to the oil and gas conservation board; providing authority for the board to enter into certain co-operative agreements for research and development; and providing authority for the board to conduct hearings to determine why certain royalty payments have not been paid and to order their payment. — Laws 1975, ch. 129.

Effective Date.

Section 2 of Laws 1979, ch. 146 provided: "This act shall take effect on July 1, 1979."

40-6-19. Co-operative agreements authorized. The board and division of oil and gas conservation are authorized to enter into co-operative agreements with the national, state or local governments, and with independent organizations and institutions for the purpose of carrying out research and development experiments involving energy resources to the extent that the project is funded or partially funded and approved by the legislature.

History: C. 1953, 40-6-19, enacted by L. 1975, ch. 129, § 2.

CHAPTER 7

OIL AND GAS COMPACT

Section
40-7-1. Interstate compact to conserve oil and gas — Authority for governor to join.
40-7-2. Authority for governor to execute extensions or withdraw from compact.
40-7-3. Official representative — Assistant representative.

40-7-1. Interstate compact to conserve oil and gas — Authority for governor to join. The governor of the state of Utah is authorized and directed, for and in the name of the state of Utah to join with the other states in the Interstate Oil Compact to Conserve Oil and Gas, which was executed in Dallas, Texas, on the 16th day of February, 1935, and has been extended to the 1st day of September, 1959, with the consent of Congress, and that said compact and all extensions are now on deposit with the department of state of the United States.

History: L. 1957, ch. 131, § 1.

Compiler's Notes.

The original Interstate Compact to Conserve Oil and Gas, which was to expire September 1, 1937, was extended from time to time by the various states with the approval of Congress. The latest extension by Con-